

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

PARVEZ YAZDANI, et al.,)	15-CV-01427-TR
)	
Plaintiff,)	Portion of Hearing
)	Transcribed
vs.)	
)	Philadelphia, PA
BMW OF NORTH AMERICA, LLC,)	
et al.,)	
)	June 14, 2016
Defendant.)	9:36 a.m.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE TIMOTHY R. RICE
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:	PATRICK HUGHES, ESQUIRE RAYMOND MACK, ESQUIRE DELUCA, LEVINE, LLC 3 Valley Square 512 Township Line Road Suite 220 Blue Bell, PA 19422
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I N D E X

WITNESSES: THE COURT: DIRECT CROSS REDIRECT RE CROSS
FOR THE ???:

??? Yeldman	93	4/Mac	54/Hei	76/Mac
				94/Mac
Michael Zazula		103/Mac		
Voir Dire		97/Mac		

<u>EXHIBITS:</u>	<u>Ident.</u>	<u>Evid.</u>
P-24 Resume of Michael Zazula	101	102

Colloquy

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1 (The following was heard in open court at 9:36 a.m.)

2 THE COURT: Cross? Direct?

3 MR. MACK: Cross, Yeldman.

4 THE COURT: Mr. Yeldman, do you want to come back up?

5 MR. HEINGOLD: Yeldman. Yeldman.

6 THE COURT: Yeldman? Sorry.

7 MR. HEINGOLD: Rhymes with seldom.

8 THE COURT: Oh, right. You're still under oath, sir.

9 Okay?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Thanks. Thanks for coming
12 back. Everybody have a good night?

13 MR. MACK: Yes, Judge. How about you?

14 THE COURT: Good. Phillies won again so --

15 MR. MACK: It's a start.

16 THE COURT: -- things are getting better.

17 MR. HEINGOLD: Feel like they're becoming what we
18 feared they would be.

19 THE COURT: Yes. Yes.

20 THE CLERK: All rise.

21 (Jury in at 9:33 a.m.)

22 THE COURT: Welcome back, everyone. Have a seat.
23 Mr. Yeldman is still on the stand, and Mr. Mack, you can
24 proceed.

25 MR. MACK: Thank you, Judge. Good morning, Your

Yeldman - Cross (Mac)

4

1 Honor.

2 THE COURT: Good morning.

3 CONTINUED CROSS-EXAMINATION BY MR. MACK:

4 Q Good morning, Mr. Yeldman.

5 A Good morning, Mr. Mack.

6 MR. MACK: Let's see 126, pages 9 through --
7 actually, page 12.

8 BY MR. MACK:

9 Q Mr. Yeldman, when -- when we left yesterday, we were
10 talking about the oil sight glass. Do you remember?

11 A Yes.

12 Q All right. And we had gone over some testing data that
13 BMW in Germany had provided you about the oil site glass's
14 performance or the motorcycle's performance under conditions as
15 Mr. Yazdani described he was operating his motorcycle on the
16 day of the fire, right?

17 A Yes.

18 Q What we didn't do and what I wanted to go back and do now
19 for the jury is explain to them what these temperatures are.
20 You have them in the center -- centigrade, is that what you
21 said?

22 A Centigrade, yes.

23 Q Yeah. So we -- we want -- we want to translate those to
24 fahrenheit, and I'm going to ask you if these values are
25 accurate. Okay? When we're talking about the temperature 145

Yeldman - Cross (Mac)

5

1 to 148 celsius, right here. See that?

2 A Yes.

3 Q 145 and 148 celsius translates to 293 degrees fahrenheit
4 to 298 degrees fahrenheit, right?

5 A That sounds right.

6 Q All right. And then when we're talking about 130 to 140
7 here, 130 to 140 translates to 266 degrees to 284 degrees
8 fahrenheit, right?

9 A Yes.

10 Q All right. The next set of data is 390 degrees to 400
11 degrees fahrenheit. Do you see that?

12 A Yes.

13 Q All right. And that translates to 734 degrees fahrenheit
14 to 752 degrees fahrenheit, right?

15 A Yes.

16 Q 160 to 165 degrees centigrade, do you see that?

17 A Yes.

18 Q And that translates to 329 degrees -- or I'm sorry -- 320
19 degrees to 329 degrees fahrenheit, right?

20 A Yes. Sounds correct.

21 Q What is the heat deflection temperature point of the oil
22 sight plastic used in Mr. Yazdani R1150R?

23 A I don't know it by heart, but I believe it's in one of the
24 documents that --

25 Q Is it 329 degrees fahrenheit, sir?

Yeldman - Cross (Mac)

6

1 A Yes.

2 Q Okay. It is, right?

3 A Yes.

4 Q Okay. Now, during this testing that BMW in Germany
5 performed of Mr. Yazdani's bike back in 2002, two years before
6 his was -- his model year, they determined that at -- after 25
7 minutes of a bike such as Mr. Yazdani's idling on center stand
8 would level off temperaturewise, correct?

9 A Can we go to the text? They talked about the times and
10 the temperatures.

11 Q Go to the first page, the -- the first page of that. So
12 19.

13 MR. MACK: Let's go down to the bottom, highlight
14 that. Go through the whole thing. Yeah.

15 A Yes.

16 BY MR. MACK:

17 Q Particularly, sir, if we're looking down here at this
18 paragraph, another test run with an 1150R, it's the authority,
19 motorcycle revealed the following results. Running at normal
20 idle, the temperatures remained constant after 25 minutes at 40
21 degrees celsius, right? And that's 104 degrees fahrenheit.

22 A Yes.

23 Q Right? So after 25 minutes, the temperature at normal
24 idle like Mr. Yazdani was doing on center stand levels off at
25 104 degrees fahrenheit, right?

Yeldman - Cross (Mac)

7

1 A Yes.

2 Q Is that dangerous to the oil sight glass?

3 A No.

4 Q Okay.

5 MR. MACK: Then if we go to the next page, if we
6 highlight the top.

7 BY MR. MACK:

8 Q They run the test from 25 to 50 minutes, right?

9 A Right.

10 Q And that's to determine whether or not the -- the
11 temperatures increase between 25 and 50 minutes, right?

12 A Yes.

13 Q Because what BMW is trying to determine is whether or not
14 the bike presents a danger if you allow it to continue to run,
15 like Mr. Yazdani did, over an extended period of time, right?

16 A Yes.

17 Q And BMW determined that the temperature did not increase,
18 right?

19 A Yes.

20 BY MR. HEINGOLD: Objection.

21 THE COURT: Yeah.

22 MR. HEINGOLD: Multiple --

23 THE COURT: What's your objection?

24 MR. HEINGOLD: -- questions in there.

25 THE COURT: Pardon me?

Yeldman - Cross (Mac)

8

1 MR. HEINGOLD: Multiple questions in there. He made
2 a statement and then a question.

3 THE COURT: All right.

4 MR. MACK: I'll rephrase it, but --

5 THE COURT: Okay. Just break it --

6 BY MACK:

7 Q And BM -- BMW determined that the temperature did not
8 increase, correct?

9 A It did not increase in that period of time. Yes.

10 Q All right. And -- and there's no testing you're aware of
11 that would suggest that it would increase after 50 minutes,
12 right?

13 A No. There is no testing, but I -- if I may say it in
14 common sense, it would increase. It would not stabilize,
15 because there's no additional -- there's no continued
16 ventilation or cooling.

17 Q So you're suggesting that after 20 -- after remaining
18 stable for 25 minutes at a stationary position on a center
19 stand, suddenly the temperature would just start to increase?

20 A No, not suddenly. Just basically, linearly.

21 Q Well, linearly, it would stay stable, because linearly, it
22 stayed stable for 25 minutes.

23 A Yes, it did.

24 Q Well, okay.

25 MR. MACK: Let's go back to that first page, 19.

Yeldman - Cross (Mac)

9

1 BY MR. MACK:

2 Q This testing it called extended in-use testing, right?

3 You have to answer yes or no. I'm sorry.

4 A I'm sorry. Yes. That's what it's called.

5 Q All right. It's not called abusive testing, right?

6 A No.

7 Q It's not called abnormal use testing, right?

8 A No.

9 Q It's not called severe environment testing, right?

10 A No.

11 Q It's called extended in-use testing.

12 A Yes.

13 Q Mr. Yazdani was using his vehicle, right?

14 A Yes.

15 Q On the day of the fire?

16 A Yes.

17 Q For an extended period of time?

18 A For the -- much like this, yes.

19 Q Yeah. Well --

20 A For that period of time.

21 Q -- less than this, right?

22 A Yeah. Well, that's what it's proposed, that he was
23 running it for 20 minutes.

24 Q Thirty to 40.

25 A Twenty to 30 minutes, something like that. Yes.

Yeldman - Cross (Mac)

10

1 Q Thirty to 40 minutes.

2 A Okay.

3 Q I don't think you can recall that accurately, but 30 to 40
4 minutes he says, and that's much less than this, right? This
5 is 50 minutes.

6 A That's less than the 50. Yes.

7 Q Right. All right. I want to -- I want to take you to
8 your deposition. You've testified in this case before, right?

9 A Yes, in my deposition.

10 MR. MACK: All right. Let's go to P-114.

11 THE COURT: Oh.

12 MR. MACK: We have two copies, right?

13 THE COURT: Okay. Thank you.

14 MR. MACK: I'm going to bring a copy for (inaudible
15 9:42:05).

16 THE COURT: That's all right. I'll give him mine,
17 and I'll just follow along.

18 MR. MACK: I have -- I have two, Judge.

19 THE COURT: Do you have it? Okay.

20 MR. MACK: So you can see it up close.

21 THE WITNESS: Thank you.

22 BY MR. MACK:

23 Q Now, in this deposition, you testified as a representative
24 of BMW North America, right?

25 A Yes, I did.

Yeldman - Cross (Mac)

11

1 Q Not in your personal capacity.

2 A No.

3 Q Okay. Now, do you remember coming into an office and
4 sitting at a conference room table for this deposition?

5 A Yes.

6 Q And my partner, Mr. Hughes, asked you questions, right?

7 A Yes.

8 Q And you were sworn just as you were sworn here today?

9 A Yes.

10 Q All right. Now, on page 81, you're asked, "What about
11 what you read --"? Sorry. I just lost it because you were
12 going back down. 80. "What about what you read talks about
13 starting the bike if the temperature outside is cold?" Right?
14 And -- and you corrected Mr. Hughes by telling him that it's
15 not about the temperature outside. It doesn't have much to do
16 with the ambient temperature of -- of the atmosphere, right?

17 A Okay. Yeah.

18 Q And -- and you said, "All it says is that you're starting
19 -- you're starting an engine that is cold because it says do
20 not warm up the engine", right?

21 A Yes.

22 Q "So everybody knows that when you start an automobile
23 engine or a motorcycle engine, or I should say an internal
24 combustion engine, that it is cold. In other words, it's at
25 ambient temperatures and that its operating temperature is

Yeldman - Cross (Mac)

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1 almost twice as high or more than the ambient temperature. If
2 we're talking about even a 100-degree summer day, that engine
3 is cold and not until it's about 200 degrees is it warmed up."
4 Do you remember giving that answer?

5 A Yes.

6 Q All right. Then you say, "Do you believe it's common
7 knowledge?" You say, "No. The common knowledge is not the
8 temperature." Did you mean not the temperature of the -- of
9 the engine or the operating temperature of the bike is not
10 common knowledge?

11 A Generally, that's what I meant. Yes.

12 Q All right. Now, the operating temperature -- what do you
13 define as the operating temperature of the -- of the
14 motorcycle's engine?

15 A Well, it's a range.

16 Q Okay.

17 A So it's difficult for me to give you operating
18 temperatures based on the oil temperatures of this air-cooled
19 engine. I'm most familiar with cooling temperatures that most
20 of us see on the gauges in our cars, and it's somewhere around
21 220 to 260 degrees fahrenheit.

22 Q All right. And that's for a liquid cool?

23 A That's a liquid cool engine, and the -- it's surrounding
24 temperature of the metals is nearly equal to that.

25 Q What's the importance of the -- the difference between the

1 operating temperature and the surrounding temperature of the
2 metals, if any?

3 A The difference between the operating temperature and the
4 surrounding temperature --

5 Q Temperature of the metals.

6 A There would be no difference. That -- that is --

7 Q You said it would be similar.

8 A Yeah. It would be -- it would be nearly the same, because
9 temperatures equalize when they're -- when they are joined.

10 Q Okay.

11 A When the surfaces are meeting. Yes.

12 Q All right. And the operating temperature, you gave a
13 liquid cooled engine operating temperature range, right?

14 A Yes.

15 Q But Mr. Yazdani's was an air-cooled engine.

16 A Yes.

17 Q So it has a different operating temperature range, right?

18 A It's a similar operating temperatures.

19 Q You don't know what it is?

20 A Well, I would say that it's about the same, maybe a bit
21 higher, maybe a bit lower, depending on the -- the environment.

22 Q Okay. And -- and when you say a little bit higher, you
23 mean a little bit higher. What's that range again that you
24 gave for the liquid cooled?

25 A Around 220 to 240, 250, around there.

Yeldman - Cross (Mac)

14

1 Q You say a little bit higher. How -- how much is a little
2 bit? What are we talking?

3 A I would venture to say it's not much difference.

4 Q Not much difference. Okay. All right. Now, let's go to
5 page 87. I'm sorry, 88, bottom of 88. Mr. Hughes asked you
6 about the -- how does one know when the engine is running
7 smoothly on a bike so that they could switch it from D10
8 position to the -- to the C position where it's (inaudible
9 9:47:05). Do you remember that?

10 A Yes.

11 Q And you told him in your deposition on line 14 of page
12 88 --

13 MR. MACK: If we could highlight 12 through 14.

14 BY MR. MACK:

15 Q "So to some extent, it's subjective to the user, correct?"

16 A Yes.

17 Q And you answered, "Yes." You remember that?

18 A Yes.

19 Q What is subjective about whether an engine is warmed up or
20 not? Can you explain that to the jury?

21 A There's nothing subjective about the engine being warmed
22 up or not. I meant to say that the -- the operator has to make
23 a judgment of whether it's warmed up or not or when to bring
24 the choke lever back. As Mr. Yazdani testified earlier, he got
25 the feel for it. He knew that -- that if it started to feel

Yeldman - Cross (Mac)

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1 like it was going to stumble and die, it still needed more
2 choke. For example, if it was really cold and he pushed it all
3 the way and it started up and it was running and then he
4 brought it back to the halfway D10 and it started to stumble
5 and die, he would probably push it back again and let it run
6 for another few seconds and then try again, and it's a kind of
7 a -- that's what I meant.

8 Q Okay. And so once -- once the operator of the motorcycle
9 determines that there's enough fuel air mixture and that the
10 engine is warm enough, right, so that the bike can safely be
11 moved to a C without having to risk a stall, then they move it
12 to C.

13 A Yes.

14 Q And -- and so it's whenever the user determines that it's
15 right.

16 A Yes.

17 Q And if they -- if they fail, they'll just stall out and
18 they'll have to start the process over again.

19 A Yeah. Somewhat like a learning process.

20 Q Right. And so Mr. Yazdani, his motorcycle on the day of
21 the fire, he started it. He moved it to the D10 position,
22 determined very quickly that it was ready to go and he moved it
23 to the C position and let it go and it did not stall, right?

24 A Right.

25 Q All right. So because it didn't stall, it was warmed up,

1 right?

2 A Well, it wasn't warmed up, but it was warmed up enough not
3 to stall.

4 Q Well, what's the difference?

5 A The difference is that -- that the engine -- he starts the
6 engine or one starts the engine full D10. It's cold, very cold
7 let's say and then it's -- a couple of seconds go by and then
8 you bring it back to the D10 and it's still running a little
9 rough but it doesn't stall. Okay? And then he brings it back
10 to the third D10 or no D10, no choke, and it seems to be
11 running okay. It's not fully warmed up. It's not warmed up.
12 Maybe it's warmed up enough to be driveable.

13 Q Okay. It's warmed up pursuant to the manual, right? The
14 -- warm-up process that's described in the manual is finished
15 at that point.

16 A Yes.

17 Q Okay. So after about a minute, he's done warming up the
18 vehicle --

19 A He's --

20 Q -- per the terms of the manual.

21 A It's warmed up enough to be driven.

22 Q All right. So per the terms of the manual, he's done.

23 A Yes.

24 Q Okay.

25 Q Let's go to -- let's continue on that answer. You're

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17

1 describing lines 14 through 20. You see lines 14 through 20?

2 A Yes.

3 Q That's the process you just described for the jury, right?

4 A I believe so. Yes.

5 Q Look at your next question and answer. It's actually a
6 continuation, because Mr. Hughes says all right. He doesn't
7 ask another question, but you continue. So let's look at that,
8 and then we'll go to the next page once we've done that.

9 MR. MACK: So let's blow that up.

10 BY MR. MACK:

11 Q You say, "Again, during the delivery process --"

12 MR. HEINGOLD: Your Honor, objection.

13 THE COURT: What's your objection?

14 MR. HEINGOLD: It's beyond the scope of your pretrial
15 order.

16 THE COURT: All right. Just take it down for a
17 second, sir, please. What's -- let's go over there. Excuse
18 us, folks. If you want to stand and stretch, go ahead.

19 (Sidebar begins)

20 MR. MACK: The jury asked a question, Judge,
21 yesterday.

22 THE COURT: Uh-huh.

23 MR. MACK: Why is it really necessary for (inaudible
24 9:51:37) manual.

25 THE COURT: Uh-huh.

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1 MR. MACK: Well, the delivery process is instrumental
2 towards instructing users how to use the bike correctly, as BMW
3 testified at their deposition, and this witness is going to
4 explain that even though it's explained in here, it's
5 fundamental that the delivery process include an instruction on
6 how to stop the vehicle.

7 THE COURT: But he didn't buy it from --

8 MR. MACK: No. No. No.

9 THE COURT: He got it from somebody else.

10 MR. MACK: But it's -- it's to show the manual alone
11 isn't a standalone document. Doesn't intend it to be a
12 standalone document. It's not a standalone document. BMW
13 relies on a system, a whole system of warnings, which is later
14 going to include a light that we're going to show.

15 MR. HEINGOLD: I object to that. We actually filed a
16 motion on all of this saying it just distracts everybody from
17 everything. He got a manual. He read the manual. He said he
18 understood the manual. He said it was clear. Now they're
19 going to try to go against your Judge's -- the Judge's order to
20 try to go back and talk about relying on dealerships and --

21 THE COURT: Yes.

22 MR. HEINGOLD: -- and that type of thing.

23 MR. MACK: Judge, it's beyond the order.

24 THE COURT: Go ahead. Yes.

25 MR. MACK: The decision is this. I believe that that

Yeldman - Cross (Mac)

19

1 order came up in Vigilante's testimony. Right? It was -- it
2 was part of Vigilante's -- your -- your effort to preclude
3 Vigilante, and the Court ruled that Vigilante couldn't testify
4 about that aspect of his testimony, of his opinion.

5 THE COURT: Uh-huh.

6 MR. MACK: This is BMW testifying about it. This is
7 not our paid consultant testifying about it, and this is BMW
8 saying that their own manual is not sufficient. We also need
9 this. It's perfectly -- the jury actually asked the question.

10 THE COURT: Well, ask him that, if his -- if he
11 believes the manual is sufficient, but we're not involved in a
12 situation where he got the product delivered from the dealer.
13 He bought it from somebody else.

14 MR. HEINGOLD: This is -- this is exactly what we're
15 trying to avoid, Your Honor --

16 THE COURT: Right.

17 MR. HEINGOLD: -- and this is like desperate
18 scramble.

19 MR. MACK: There's nothing desperate about this,
20 counsel, and I don't appreciate the comment.

21 THE COURT: Well, here's what we're going to do from
22 now on at the trial. You guys talk to me and don't argue with
23 each other and let's keep things civil, because I don't like
24 people treating each other with disrespect.

25 MR. MACK: I agree.

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20

1 THE COURT: Okay?

2 MR. HEINGOLD: Thank you, Judge.

3 THE COURT: Okay? So the objection is sustained.

4 MR. HEINGOLD: Thank you, Judge.

5 (Sidebar ends)

6 THE COURT: Objection sustained. Sustained. You can
7 ask another question.

8 BY MR. MACK:

9 Q Is the BMW Rider's Manual alone sufficient to instruct a
10 user how to use the bike?

11 A I believe so.

12 Q There's nothing else that BMW relies on in terms of
13 stickers or anything else?

14 MR. HEINGOLD: Objection, Your Honor.

15 THE COURT: I'll overrule that.

16 A In terms of stickers, you mean warning labels and such?

17 BY MR. MACK:

18 Q Or anything else.

19 A I believe so. Yes.

20 Q I see.

21 MR. MACK: Judge, I want to be careful here. Can we
22 just talk? Okay.

23 THE COURT: You know the rules.

24 BY MR. MACK:

25 Q All right. Let me -- let me ask you this.

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21

1 MR. MACK: Go to page -- let's go to page 97. On the
2 top of page 97, lines 1 through 14, could you highlight those.

3 BY MR. MACK:

4 Q All right. Do you remember being asked about the purpose
5 of the sight glass?

6 A Yes, I do.

7 Q All right. And you described it as a plastic like you did
8 yesterday, right?

9 A Yes.

10 Q All right. And you said that it allows the rider, you, to
11 look at the oil level in the crankcase of the motorcycle,
12 right?

13 A Yes.

14 Q The crankcase of the motorcycle during normal routine
15 operation expands and contracts, right?

16 A Yes. Oh, yes.

17 Q It moves.

18 A Yes.

19 Q The oil sight plastic that we're talking about and seal
20 system is located on the crankcase, right?

21 A On a cover, crankcase cover, yes.

22 Q All right. So it also expands and contracts and moves.

23 A The oil sight glass?

24 Q Yes.

25 A Yes.

Yeldman - Cross (Mac)

22

1 Q Okay. The oil sight glass replaces the dipstick, right?

2 A Yes.

3 Q You don't know in terms of cost how much it costs to put
4 an oil sight glass in versus a dipstick, do you?

5 A No.

6 MR. HEINGOLD: Objection, Your Honor.

7 THE COURT: Overruled.

8 BY MR. MACK:

9 Q You don't know if it's more expensive to use a dipstick or
10 a sight glass?

11 A I do not.

12 Q And the majority of BMW motorcycles use a dipstick or a
13 sight glass?

14 A I believe -- I believe the majority of them use an oil
15 sight glass.

16 Q Okay. For how long?

17 A For how long?

18 Q Yeah. For how long has BMW built motorcycles with a sight
19 glass instead of a dipstick?

20 A To -- I really don't have knowledge older than the '94
21 model we were speaking of.

22 Q Oh --

23 THE COURT: So at least in '94.

24 A I believe that some before that had oil sight glasses, but
25 I can't sit here and tell you in fact that older models had it.

1 BY MR. MACK:

2 Q All right.

3 A I believe they did.

4 Q Is the dipstick a part that fails on a motorcycle?

5 A Generally, no.

6 Q It's not a part that you have to have replaced regularly
7 or it's not a service item, right?

8 A That's correct.

9 THE COURT: Does everybody in the jury know what
10 they're talking about, a dipstick? Okay.

11 MR. MACK: Sorry. Thank you, Judge. Not me, at
12 least talking about the part. Let's -- let's focus on the
13 motorcycle.

14 THE WITNESS: Let's focus. Okay.

15 THE COURT: Mr. Hughes seemed to laugh the hardest at
16 that.

17 MR. MACK: Partners for a long time.

18 BY MR. MACK:

19 Q All right. The dipstick itself was not a service item,
20 but the oil sight glass is a service item, right?

21 A You mean to be replaced?

22 Q Yeah. You sell replacement sight glasses, right?

23 A Yes. Sure.

24 Q And -- and they leak, right?

25 A Well, they're -- they're sold for two reasons, if they

1 should leak and if you replace the crankcase cover that it
2 installs in.

3 Q You're -- you're telling this jury that the procedure for
4 replacing the sight glass involves replacing the crankcase
5 cover also?

6 A No. No. No. I'm saying that, for example, if you drop
7 the bike and you crack the crankcase cover that the oil sight
8 glass was in, the replacement process would require a new oil
9 sight glass.

10 Q Okay. But also, the sight glass over time wears out
11 because it's -- the crankcase is expanding and contracting and
12 the rubber seal is degrading --

13 A Yes.

14 Q -- then you would replace the sight glass, right?

15 A Yes, like any other seal.

16 Q And BMW replaces those under the warranty if they fail,
17 right?

18 A Yes.

19 Q And that means the sight glasses will or can fail within
20 the first one to three years of the bike's ownership, right?

21 A It's possible. Yeah.

22 Q Yeah. And just through normal operation, they can leak,
23 right?

24 A That's possible.

25 Q All right. And BMW, if the bike is still under warranty,

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25

1 will replace that service item for free, right?

2 A Yes.

3 Q Now, what happens when an oil sight glass leaks and the
4 exhaust system of the bike is hot?

5 A I don't understand your question. If the oil sight glass
6 is leaking, you're saying if it leaks enough, then does oil get
7 on the -- what's --

8 Q I'm asking you what are the hazards presented by a service
9 item like an oil sight glass leaking in one to three years or
10 five years or ten years on a BMW motorcycle. Where are the
11 hazards presented by that process?

12 A Well, the hazards would generally be the same as any other
13 oil leak on an internal combustion engine.

14 THE COURT: Which are what?

15 THE WITNESS: The motor oil, the engine oil.

16 THE COURT: What happens to it?

17 THE WITNESS: It leaks out.

18 THE COURT: And then what? Anything else can happen
19 after it leaks out? That's what he's asking, I think.

20 THE WITNESS: Well, I believe, of course, he's
21 relating it to this incident, and, of course, if oil is hot
22 enough and creates vapors and it's -- it's close enough to an
23 ignition source, it will ignite.

24 BY MR. MACK:

25 Q Well, oil is going to be hot the second it touches an

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1 ignition source that's 700 degrees fahrenheit, right?

2 A The -- if -- yes. The -- the oil has to be hot enough to
3 -- to create vapors.

4 Q Right. And -- and I think what you're trying to do is
5 talk about the -- the process of combustion, right?

6 A Yeah. When you were asking me what else could happen.
7 Yes.

8 Q Right. And -- and we talked about, during normal
9 operation of the bike, which went over the numbers a few
10 minutes ago, the exhaust system gets as hot as -- well, if we
11 look at just the manifold, it gets from 572 degrees to 590
12 degrees fahrenheit during normal operation, right?

13 A Yes.

14 Q If the oil sight glass leaks because it's not installed
15 correctly, it just fails, it degrades over time, whatever, and
16 leaks oil onto a 572 to 590 degree surface, what's going to
17 happen to the oil?

18 A If the oil is hot enough to create vapors, you can have
19 ignition if the oil drips right onto the exhaust.

20 Q Ad that's hot enough in your mind. 500 plus degrees is
21 hot enough to ignite the oil vapors, right?

22 A No. No. I'm talking -- the ignition of the oil -- of the
23 exhaust is hot enough.

24 Q Yes.

25 A But you have to have the oil hot enough.

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1 Q And when the oil contacts the exhaust, and you're familiar
2 with the -- the way heat transfers, right?

3 A Yes.

4 Q And the heat is going to be transferred from the exhaust
5 system through the oil, right?

6 A Yes.

7 Q It's like frying an egg in a -- a frying pan, right?

8 A Yes.

9 Q You're going to -- you're going to cook the oil, right,
10 like you cook the egg?

11 A Yeah.

12 Q And then the oil is going to be hot enough to do what?

13 A You have to -- no. That -- you're jumping ahead. The --
14 the ignition sequence have to -- you have to have oil vapor,
15 and I believe that if you drip engine temperature oil onto an
16 exhaust, you may or may not have the conditions for ignition.

17 THE COURT: By ignition, you mean a fire?

18 THE WITNESS: By ignition, I mean a fire, ignition of
19 the combustibles. Yes.

20 MR. MACK: Right. Can we see P-105(f), page 7?

21 THE COURT: Okay.

22 MR. MACK: Do you have a copy?

23 MR. HEINGOLD: (Inaudible, 10:02:37). Your Honor --

24 THE COURT: Yes. You have an objection to this?

25 MR. HEINGOLD: I have an objection.

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1 THE COURT: All right. What's your objection? Can I
2 see the exhibit?

3 MR. HEINGOLD: My objection is --

4 MR. MACK: Yeah. Sure.

5 THE COURT: Can you take that down, sir? Thanks.

6 MR. HEINGOLD: -- this will also include your
7 pretrial order.

8 MR. MACK: Can I lay a foundation, Judge?

9 THE COURT: Sure.

10 BY MR. MACK:

11 Q The pack of photographs that I just handed you, sir --

12 A That I don't have?

13 Q Did -- here you go. (Inaudible 10:03:13).

14 MR. MACK: (Inaudible).

15 BY MR. MACK:

16 Q I want you to look at --

17 MR. HEINGOLD: I renew my objection.

18 BY MR. MACK:

19 Q Ignoring the first two paragraphs. Okay?

20 THE COURT: Well, let's just see what he's doing.

21 A Photos?

22 THE COURT: I don't know what he's doing with it.

23 BY MR. MACK:

24 Q Yeah. Ignore the first two pictures. The rest of the
25 pictures in that packet are a picture of a BMW R1150R just like

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1 Mr. Yazdani's, 2004, and it's silver. Same color as Mr.
2 Yazdani's, right?

3 A Yes, sir.

4 MR. MACK: All right. Just want to have him explain
5 the bike, Judge.

6 THE COURT: Okay. What's your objection?

7 MR. HEINGOLD: Is that it?

8 MR. MACK: That's it.

9 MR. HEINGOLD: No objection.

10 MR. MACK: All right. (Inaudible, 10:03:51)

11 BY MR. MACK:

12 Q Now, just so the jury can see, let's just go to page 3 of
13 that exhibit, 105. So the jury understands, that's one of the
14 photographs you just reviewed, right?

15 A I thought I was only supposed to look at --

16 Q The third paragraph --

17 A -- this one.

18 Q It's the third paragraph in the packet. That's the same
19 one.

20 A Oh, okay.

21 Q That's the BMW 1150R that Mr. Yazdani had, right?

22 A Yes, it is.

23 Q All right. Not the very one, but it's the same style --

24 A The same -- yes.

25 Q -- the same color, the same year, everything else, right?

1 A Yes.

2 Q All right. We're going to look at an exploded view of the
3 area where the sight glass is. It's the one we were just on.
4 There we go. In the middle of that screen, this round thing
5 right here, what is this round thing?

6 A That is the oil sight glass.

7 Q All right. Tell the jury what's around the oil sight
8 glass. What is this black thing?

9 A That's the -- the left cylinder exhaust manifold or
10 exhaust pipe header that wraps -- as you see, goes forward,
11 wraps around and starts to go back towards the muffler, and it
12 sits about an inch or so outboard of the crank case there that
13 you see.

14 Q When standing in an upright position like it is here, when
15 that oil sight glass leaks oil, where is that oil going to drop
16 down to?

17 A Well, it's a matter of how much it leaks. If it's -- if
18 the seal is leaking and it's let's say dripping or leaking, as
19 many of us would be familiar with an oil leak in an engine at a
20 gasket, it -- it seeps. Okay? So if there's a leak and it
21 drips straight down, it's going to go down the side of the
22 crank case and onto the ground.

23 Q The crank case and this pipe, this exhaust manifold, the
24 left --

25 A Yes.

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1 Q -- that you just described?

2 A Yes.

3 Q They're directly adjacent to each other and touching on
4 this bike.

5 A They're not touching. No.

6 Q Oh, these aren't touching.

7 A That exhaust pipe is -- is about that far away from the
8 side of the crank case.

9 Q Now, the oil system is under pressure.

10 THE COURT: Hold on. Hold on. It's about what? An
11 inch?

12 THE WITNESS: About an inch and a half.

13 THE COURT: Okay.

14 THE WITNESS: Maybe even two.

15 BY MR. MACK:

16 Q That's right. And the oil system is under pressure,
17 right?

18 A When it's running, yes.

19 Q Right. So when it's running and it leaks oil like you
20 just described, is -- is it just going to seep or is it going
21 to spread?

22 A Well, when -- we have to quantify this. When you're
23 talking about a leak, we go from seeping to let's say the oil
24 sight glass comes right out, completely, as in this situation,
25 melts and falls out. Then you have a big leak.

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1 Q So it depends on how bad the leak or how bad the -- the
2 oil sight glass system fails, right?

3 A In -- in the case -- in any case of an oil leak, it could
4 be -- it could be a bad leak or it could be catastrophic if
5 it's a big leak.

6 Q Okay. And BMW has no control. Once they introduce these
7 bikes into the stream of commerce, they have no control over
8 when these oil system -- this oil sight glass system fails,
9 right?

10 A They have no control over it? I don't understand what
11 that means.

12 Q They don't require in the manual that Mr. Yazdani or
13 anybody else perform any maintenance on the oil sight glass
14 system to make sure that it doesn't fail. There's no filter to
15 replace, is there?

16 A No. There's -- it's not a maintenance item.

17 Q So there's nothing that anybody can do if you own one of
18 these to prevent this plastic piece from failing.

19 A No.

20 Q Okay. So if it fails enough and oil leaks onto this pipe,
21 this pipe, as we just talked about earlier today, according to
22 BMW's testing, ranges from 734 degrees fahrenheit to 752
23 degrees fahrenheit during normal operation just roughly.

24 A During that -- that time frame, yes.

25 Q Okay. Now, 734 to 752 degrees fahrenheit, is that enough

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1 to -- enough to turn -- enough heat to turn that oil into
2 vapors and ignite?

3 A Given the right conditions, yes.

4 Q All right. You talked in your deposition about how BMW
5 defines the word -- what it means by the word overheat in terms
6 of what kind of damage it can cause to the bike itself, right?

7 A Yes.

8 Q What did you describe as the damage that can cause by an
9 overheated bike running like Mr. Yazdani was running?

10 A What would I describe or did I describe?

11 Q Yeah. Well, tell us. Tell the jury.

12 A So you're asking me in general with an internal combustion
13 engine if it's allowed to exceed its operating temperatures,
14 what would result?

15 Q No. I'm not. In fact, I'm asking you something quite
16 different. There's no indication anywhere that you're aware of
17 it that the bike while running at idle, at normal idle, would
18 exceed its operating temperatures, right? There's no testing.
19 there's no data. There's nothing that you're aware of that
20 would suggest that.

21 A No. Just -- just my understanding of -- of physics.

22 Q Right, which you -- is superior to the German engineers
23 who designed and built the motorcycle, right?

24 MR. HEINGOLD: Objection.

25 THE COURT: Sustained. Don't argue with the witness.

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1 BY MR. MACK:

2 Q Well, I want to know --

3 THE COURT: Ask another question.

4 BY MR. MACK:

5 Q Tell me this. BMW, the people who made the bike, they
6 don't think that, right?

7 MR. HEINGOLD: Objection, Your Honor.

8 THE COURT: Well, if he knows. Do you know?

9 A I don't know. I don't -- okay. I don't understand the
10 question.

11 BY MR. MACK:

12 Q All right. The -- the testing -- the testing, you
13 understand the testing that was sent to you by Wolf -- whatever
14 his names is Wolfbush in -- in Germany to you in 2006, right?

15 A Was I --

16 Q You understood that email.

17 A I understand the testing that took place with the extent
18 he used tests --

19 Q Right.

20 A -- was over a fixed amount of time.

21 Q Right.

22 A But I propose that my common knowledge of engineering and
23 physics would tell me that an air-cooled engine, that if you
24 let it run in a stationary position beyond this time frame
25 would eventually cause damage.

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1 Q Okay. Beyond 15 minutes.

2 THE COURT: Beyond -- beyond what time?

3 THE WITNESS: Beyond the 50 minute testing --

4 MR. MACK: Beyond 50 minutes.

5 THE COURT: All right. Okay.

6 A Yeah.

7 BY MR. MACK:

8 Q All right. Let's -- let's throw that out, your common
9 knowledge. Let's talk about the 50 minutes. Okay?

10 A Yes.

11 Q During the 50 minutes, what type of damage can be caused
12 by the overheating of the motorcycle?

13 A According to the tests, there was no permanent damage.

14 Q All right. Even if you put it on high idle -- tell me
15 about high idle. You put it on high -- high idle, right?

16 A Yeah. That was the second part. It says after 50
17 minutes, they switched to idle elevation one, and the
18 temperatures raised immediately to 390 to 400 degrees
19 centigrade of the exhaust and then the other temperatures. The
20 test had to be stopped after three minutes to avoid engine
21 damage. So at the 353 minute point, they had to stop the test
22 to avoid engine damage.

23 Q Right. On high idle, and that's from switching a warm
24 engine if you run it for 50 minutes consecutively and then put
25 it to the D10 position and then they experience those

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1 temperature increases, right?

2 A Yeah. They -- they're put on after 40 minutes? Oh, after
3 50. Yes. Yeah.

4 Q All right. And so the damage, it just says damage, right?

5 A Yes.

6 Q Tell me what kind of damage can occur.

7 A Well, then you would -- you start to exceed operating
8 temperatures where the oil can no longer lubricate the moving
9 parts correctly, and then you start to degrade metal to metal.

10 Q All right. And what kind of damage is the degradation
11 metal to metal going to cause to the bike itself?

12 A Usually, in the -- the upper part of the engine where the
13 pistons and rings are, where the combustion temperatures are
14 very high, that's where you start to get the damage.

15 Q All right. And that's not the oil sight glass though,
16 right?

17 A No.

18 Q All right. So even in an overheated condition, BMW's
19 tests don't suggest that it's going to overheat the sight glass
20 and cause a failure?

21 A Well, now -- you're asking me about failures beyond the
22 three minutes?

23 Q No. What I'm asking you, sir, is what the testing data
24 from the company who built the bike tells you about the
25 operation of the bike. That's all. I just want to know what

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1 -- I want to know what damage can happen to the bike if you run
2 it at a -- at high idle for more than three minutes. Do you
3 know?

4 A Beyond -- beyond what they say? No.

5 Q You don't. Now, at idle, at -- like Mr. Yazdani was
6 doing, there's no damage that can happen to the sight glass,
7 right? You don't have any indication --

8 THE COURT: You mean pursuant to that test?

9 MR. MACK: Yeah. Within 50 minutes or his
10 experience.

11 A No. It's pursuant to the test. Yes.

12 BY MR. MACK:

13 Q Right. And so this service item, this oil sight glass --

14 A It's not a service item. We established it's -- you don't
15 replace it on a regular basis. That's what we understand a
16 service item to be, right?

17 Q No. That would be a maintenance item.

18 A Oh, I'm sorry. I'm sorry. But a service item is -- is
19 any other part?

20 Q A service item is -- is a part on a bike that can go
21 wrong, that could fail and have to be replaced, right?

22 A Which means any part.

23 Q Any part.

24 A Okay.

25 Q Well, but you testified that you don't consider a dipstick

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1 a service item.

2 A I meant it wasn't a maintenance item. I'm sorry if I
3 misunderstood. I -- I thought we were talking about items that
4 are replaced under a -- a recycled basis or a cyclic basis
5 because they wear out --

6 THE COURT: I'll tell you what.

7 A -- like brakes.

8 THE COURT: Excuse me one second. This is a very
9 interesting debate, but could we get back to the case so the
10 jury can follow what you're talking about? Because you guys
11 are having your own little private war here. So let's ask a
12 question related to the case.

13 BY MR. MACK:

14 Q Mr. Yazdani's bike did not have a dipstick, right?

15 THE COURT: I don't care about service items,
16 maintenance items. Let's ask a case about -- or a question
17 about the case. All right? Just ask another question.

18 MR. MACK: Okay.

19 BY MR. MACK:

20 Q Mr. -- Mr. Yazdani's bike didn't have a R -- his R115R did
21 not have a dipstick.

22 THE COURT: We know that.

23 A Yes.

24 THE COURT: That's asked and answered.

25 MR. MACK: All right.

1 BY MR. MACK:

2 Q The manual --

3 MR. MACK: Let's go to page 177 -- let me ask a
4 foundation question first.

5 BY MR. MACK:

6 Q You testified at your deposition what BMW North America's
7 goal is in distributing motorcycles, right? Remember that?

8 A Yes.

9 Q And in addition to receiving them from Germany and then
10 sending them off into the -- to the North American dealerships,
11 you also review the manual for typographical errors or
12 translation issues. Do you remember saying that?

13 A I remember saying that we had a person that -- in -- in
14 the engineering department that did that. Yes.

15 Q All right. And the translation issues, can you give me an
16 example of the translation issues that you're talking about?

17 A Not really any examples. It's just a matter of correct
18 English writing. Sometimes there may be a misunderstanding or
19 a better word to use in the thesaurus, but that's basically it.

20 Q All right. And BMW in its manual, P-1, has a -- this is a
21 manual received by Mr. Yazdani, P-1. I want you to look at
22 page 45.

23 A Okay.

24 Q Done reading that? It's 24 -- 24, P-1.

25

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1 THE COURT: What page?

2 MR. MACK: 24 of P-1. Well, it's -- can we blow up
3 that --

4 MR. HEINGOLD: Object to the relevance but --

5 THE COURT: Well, what are you asking about? The
6 warning?

7 MR. MACK: I'm asking about the warning, Judge.

8 THE COURT: On page 45?

9 MR. MACK: That's right, Judge.

10 THE COURT: What's the relevance of this?

11 MR. MACK: It's a translation issue, Judge. I want
12 to show that the translations --

13 THE COURT: Is there a problem with the translation
14 on the --

15 MR. MACK: Of this? There will be.

16 THE COURT: No. Is there a problem with the
17 translations on the warnings --

18 MR. MACK: Yes.

19 THE COURT: -- relating to this case?

20 MR. MACK: The adequacy of the warning is in dispute.

21 THE COURT: No, but I know. Is there a problem with
22 the translation?

23 MR. MACK: Yes.

24 THE COURT: What is it?

25 MR. MACK: The warmup period doesn't mean it's

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1 running as BMW's --

2 THE COURT: All right.

3 MR. MACK: -- testing showed.

4 THE COURT: All right. I'll allow it.

5 BY MR. MACK:

6 Q Now, the warning that's blown up on page 45, what is that
7 talking about?

8 A It's talking about the use of accessories outside BMW.

9 Q All right.

10 A What we would call after-market accessories.

11 Q All right. And the reason they caution against using
12 after-market parts on an OEM bike like -- like the R1150R that
13 Mr. Yazdani owned is because, as it says there, they have not
14 tested them, right?

15 A Yes.

16 Q And so they can't guarantee their safety.

17 A Correct.

18 Q All right. Now, this is a manual that you -- that BMW
19 North America reviewed in 2002. It was published in 2002. It
20 says that right on the front cover if you -- if you want to
21 look, right?

22 A Yes.

23 Q All right. Published in 2002, and it applies to Mr.
24 Yazdani's 2004 bike, right?

25 A Yes.

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1 Q All right. And this is a manual that BMW would have
2 reviewed for translation issues, right?

3 A I believe so.

4 Q Does BMW North America review the manual in German and
5 translate into English, or do they review a already translated
6 document to make sure it makes sense?

7 A It's my understanding that they review it already
8 translated.

9 Q All right. So somebody else performs the translation.
10 BMW North America gets the manual and reads through it to see
11 if it makes any sense.

12 A Just -- yes.

13 Q All right.

14 A That's my understanding.

15 Q This particular manual talks about -- actually, I thought
16 it was this page, but it's -- all right. The word -- there's a
17 warning about tires in here, right? Let me see it, sir, if you
18 don't mind. Thank you, sir.

19 MR. MACK: Just one moment, Your Honor?

20 THE COURT: Uh-huh.

21 MR. MACK: Thank you.

22 BY MR. MACK:

23 Q Oh, okay. It says it right there, and that's what --
24 yeah, when (inaudible 10:20:33). The manual says tyres, T-Y-R-
25 E-S, right?

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1 A Yes.

2 Q What does that mean?

3 A That's the British spelling of tires.

4 Q That's not the English. That's not the American.

5 A That's the King's English.

6 Q King's English. All right. That's -- that's one of -- is
7 that something that would have -- should have been corrected by
8 BMW North America?

9 MR. HEINGOLD: Objection to relevance, Your Honor.

10 THE COURT: Yes. I'm going to sustain it. I don't
11 see the relevance --

12 MR. MACK: All right.

13 THE COURT: -- of this to our case.

14 BY MR. MACK:

15 Q The warmup period, let's go back to warmup period.

16 THE COURT: Ask him about the warmup period.

17 BY MR. MACK:

18 Q The warmup period --

19 THE COURT: What page in the manual?

20 MR. MACK: 50 -- 60.

21 THE COURT: Is there a translation issue on that?

22 MR. MACK: I'm going to ask him.

23 THE COURT: All right.

24 BY MR. MACK:

25 Q All right. "Do not warm up the engine with the motorcycle

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1 at a standstill."

2 A I have the wrong page. What page?

3 Q It's page 60, 6-0.

4 A Sixty. I'm sorry. Yes.

5 Q "Do not warm up the engine with the motorcycle at a
6 standstill. Risk of overheating or fire." Is that a
7 translation issue? Is that a translation mistake?

8 A "Do not warm up the engine with the motorcycle at a
9 standstill."

10 MR. HEINGOLD: Your Honor --

11 A "Risk of overheating --"

12 THE COURT: Hold on.

13 A I don't believe so.

14 THE COURT: Okay.

15 BY MR. MACK:

16 Q There's no reason that you wouldn't be able to leave it at
17 a standstill safely while running after the warmup period,
18 right?

19 A Well, that's why they tell you to ride away.

20 Q No. I'm asking you why they tell you to ride away,
21 because the testing that -- documentation that we reviewed four
22 or five times today doesn't suggest that there's any
23 operational concerns with the motor vehicle -- with the bicycle
24 -- motorcycle, sorry -- with the motorcycle while running at a
25 standstill, is it?

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1 A The extended use testing is to test the motorcycle under
2 an extreme condition. In other words, it's -- it's if we leave
3 the bike running stationary, how long will it be before it
4 starts to -- we consider the possibility of damage to the bike.
5 So I believe that it's already established that you don't have
6 to warm up the bike long. You can start it up and ride it away
7 quickly. There's no reason to leave it running. As it says,
8 do not warm up the engine with the motorcycle at a standstill.
9 Ride away immediately.

10 Q All right. I want to switch -- shift gears a little bit
11 and ask you a question about winterization. Okay?

12 A Yeah.

13 Q All right.

14 A Sure.

15 Q An air-cooled engine -- is it necessary to operate an air-
16 cooled engine frequently? An internal combustion --

17 MR. HEINGOLD: (Inaudible 10:23:57).

18 THE COURT: I'm sorry.

19 MR. HEINGOLD: I don't know -- I don't know what that
20 is.

21 THE COURT: Yes.

22 MR. MACK: Well --

23 THE COURT: I'll sustain it. It's a vague question.

24 MR. MACK: All right.

25 BY MR. MACK:

1 Q The R1150R is an internal combustion air-cooled engine,
2 right?

3 A Yes.

4 Q Is it -- can you let it dormant with fluids in it and let
5 it sit over a long winter?

6 A Yes.

7 Q Is that going to cause damage to the vehicle?

8 A No.

9 Q It's not going to cause any damage to the vehicle?

10 A The only recommendation that I have read repeatedly in
11 motorcycle publications and -- and manuals and so on about
12 storing a motorcycle over the winter is that they recommend
13 that you change the oil before you store it, because used oil
14 or as oil is used, it heats up and it cools down, it heats up
15 and it cools down, and every internal combustion engine creates
16 crank case gases while it's running, because the oil is hot and
17 there's combustion by-products that get passed through rings,
18 and down in the combustion chamber where the oil is, vapors are
19 created. When the -- when you shut the engine off, the vapors
20 condense and they liquify, and some of the by-products of this
21 condensation is water. Okay? Some of it can be acidic, and
22 over time, the engine sitting cold with this moisture inside,
23 okay, that eventually evaporates through the ventilation system
24 can leave deposits that are slightly acidic which may etch or
25 damage metal surfaces. This is a very, very small possibility,

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1 and actually, as -- as engine oils get more modern and we have
2 synthetic oils and so on, they work much better than they used
3 to, and I doubt that this is even an issue anymore to be
4 worried about over a long period of time.

5 But anyway, for motorcycles -- and we motorcyclists
6 love our motorcycles. So we don't want them damaged. So the
7 idea is that it's a good idea to change the motor oil at the
8 end of the season so when the bike sits all winter long in the
9 cold garage or wherever you may have it, you don't have these
10 acidic deposits sitting on the surfaces inside. Otherwise,
11 that's all you could do.

12 If you did not change the oil -- and I confess, I
13 have done this -- and you let it sit all winter, and all winter
14 is what, about three months, three to four months where it --
15 it would not be enjoyable to ride, nothing happens.

16 THE COURT: Seems longer to me all the time, but --

17 THE WITNESS: I'm sorry?

18 THE COURT: Seems longer to me.

19 MR. HEINGOLD: We'll give you the benefit of the
20 doubt.

21 THE COURT: Yes.

22 A Yeah. I'm sorry. Let's say -- let's be realistic. I
23 mean, after November, it starts -- it's let's not ride anymore.
24 It's pretty in the Fall, but it starts to get pretty cold in
25 the morning, and I don't think you start riding until early

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1 March, and even then, it's pretty darn cold in the mornings.
2 So it's much more than three months. Maybe it's my enthusiasm.

3 Anyway, so that -- so long story short, engine oil
4 coolant, the other oils -- as a matter of fact, the model in
5 question has quite a few oils. It has -- it has oil in the
6 drive shaft. It has oil in the rear differential at the rear
7 wheel, and it has transmission oil. So that's already four
8 oils, engine oil being the most important. But -- but anyway,
9 you don't have to change them.

10 BY MR. MACK:

11 Q Because of the by-products of combustion in an internal
12 combustion engine like Mr. Yasdani owned, water vapor can
13 interact with the by-products and cause buildup of sludge,
14 right?

15 A No. The sludge doesn't build up while sitting there
16 stationary. If -- if the oil is very old, if you haven't
17 changed it in a long time, then yes, you're going to have these
18 by-products, and yes, you could get some sludge if you don't
19 change the oil.

20 Q Okay. What if you start up the engine over the wintertime
21 and it runs? Now, I'm not talking about -- I want to -- forget
22 -- ignore what you consider in your own mind a hazard, but if
23 you -- if you start up the engine and circulate the fluids, is
24 that going to prevent any additional maintenance in the spring
25 or before the winter?

1 A No.

2 Q Oh, it's not?

3 A No.

4 Q So you're saying that's not going to circulate the fluids?
5 That's not going to -- that's not going to keep deposits from
6 building up intern -- internal to the exhaust system that we
7 just described?

8 A Well, the deposits I speak of when you run the engine, in
9 that manner, if you run the engine as Mr. Yasdani did
10 periodically, you're creating more.

11 Q What do you base this on?

12 A When you start an engine and it's cold, that -- those
13 vapors or those -- the liquid that has solidified in the engine
14 starts to heat up and vaporize again. It goes back in to
15 becoming a vapor, and it's circulating through the crank case
16 ventilation system. Also, you may know that in older cars and
17 older internal combustion vehicles before emission controls,
18 this crank case was just vented to the atmosphere, and these
19 gases when the engine was running would just release into the
20 atmosphere. Now they're recycled into the combustion of the
21 engine because of emission controls.

22 Anyway, you still have the creation of the vapors and
23 then the coalition into liquid and then back and forth, and
24 then you create these -- you can create some maybe acidic by-
25 products that can be harmful to the engine over a long -- over

Yeldman - Cross (Mac)

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1 a long period of time. When you start an engine and you let it
2 run for a few minutes as Mr. Yasdani did, it warms up, but it
3 doesn't warm up completely, and you do create more by-products
4 and vapors, and then you shut the engine down, and now they're
5 sitting there on all the surfaces. Now, if I take that
6 motorcycle out and I ride it and I put it through the gears and
7 I'm running it and I'm putting load on the engine and I'm --
8 the -- an engine is a pump. So when I'm putting load on it,
9 I'm -- I'm pumping the combustion gases through the engine
10 faster. I'm heating up the engine oil. It's running through
11 all the channels faster. Okay? And these -- these deposits
12 that have built up in the crank case, these gases are all
13 burned off clean and every -- everybody is happy.

14 Q Now, you have no testing data to tell us that shows that,
15 right?

16 A I personally?

17 Q Yeah. You personally.

18 A No, but I -- I'm pretty sure you could find it in the
19 industry very easily.

20 Q Okay. And as a matter of fact, what Mr. Yasdani was doing
21 was necessary for the maintenance of his engine, wasn't it?

22 A I don't believe so at all.

23 Q Alr. Do you think what he was doing as far as circulating
24 the fluids was abnormal? You've heard of people doing that,
25 right?

Yeldman - Cross (Mac)

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1 A I believe it's abnormal.

2 Q Have you heard of people doing that before?

3 A I've heard it, and I -- I consider it a -- a -- I don't
4 know what the term to use. It's a word-of-mouth method that is
5 basically if -- if I don't take the time to -- to take the
6 battery out and charge it, disconnect it and I don't take the
7 time to change the oil, doing that is not fixing the problem.

8 Q I see. But batteries drain, right, if they're left -- if
9 they're left without charge?

10 A Well, what I was saying earlier, if you read about
11 winterization of your motorcycle in any -- in any industry
12 magazine, basically, it's telling you take the battery out,
13 charge it, put it on the bench or put it back in the bike and
14 leave it disconnected, change the oil, make sure everything is
15 clean, lubricate the chain, put a cover on it, and you're good.

16 Q All right. And BMW knows that its rider start their
17 engines up after long periods of time to avoid engine damage,
18 right?

19 A No.

20 Q No? Well, what about Mr. Ross? Do you know who Mr. Ross
21 is?

22 A No.

23 MR. HEINGOLD: Objection, Your Honor. Beyond the
24 scope.

25 THE COURT: What are we -- what -- where are we going

Yeldman - Cross (Mac)

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1 here?

2 MR. MACK: Notice that this is what BMW riders do,
3 Judge.

4 THE COURT: No. We're getting far afield.

5 MR. MACK: All right.

6 THE COURT: Sustained.

7 BY MR. MACK:

8 Q The eight prior fires, without going on details, the eight
9 prior fires involved people doing something similar to Mr.
10 Yasdani, right?

11 A And I contend that's improper operation of the motorcycle.

12 Q Okay. All right. But it doesn't say it in the manual.

13 A Doesn't say what?

14 Q Not to run it like -- that he was doing.

15 A The manual doesn't go into --

16 THE COURT: No. He's just asking you does the manual
17 say anything about this --

18 MR. MACK: What Mr. Yasdani was doing.

19 THE COURT: -- practice of running it for seven or
20 eight minutes.

21 A No. It does not.

22 THE COURT: Okay.

23 MR. MACK: All right. Thank you. That's all I have,
24 Judge.

25 THE COURT: All right. Thank you. You guys want to

Colloquy

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1 take your break now or wait until 11:00? All right. Why don't
2 we break now until quarter of 11:00. Yes. I'll read that when
3 we get back.

4 Let's break until quarter of 11:00. Keep an open
5 mind. Don't discuss the case. You can step down, sir.

6 THE CLERK: All rise.

7 THE COURT: We're going to work until about 12:00,
8 and then we'll break until 1:00 or so.

9 (Jury out at 10:33 a.m.)

10 MR. HEINGOLD: Your Honor --

11 THE COURT: Yes. Yes.

12 MR. HEINGOLD: Just waiting for the last juror.

13 THE COURT: You can step down, sir.

14 MR. HEINGOLD: I can now consult with my client?
15 He's off cross?

16 MR. MACK: He's still on the stand. He's still under
17 oath.

18 MR. HEINGOLD: Well, but --

19 THE COURT: Well, you can't coach him. Put it that
20 way. All right. He's still being examined. I mean --

21 MR. HEINGOLD: Well, I wasn't talking about -- okay.

22 THE COURT: I mean, if you want to talk to him and
23 generally about the case, but what I don't want to happen is
24 have you coach him about questions you're going to ask him in
25 response to the cross and how to respond to those things.

Colloquy

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1 Let's see what he -- he seems to be handling himself very well.

2 MR. HEINGOLD: Okay.

3 THE COURT: All right. Thanks.

4 (Recess taken, 10:34 a.m. to 10:46 a.m.)

5 THE COURT: That's all right. Yes. Tell them that
6 we're ready.

7 THE CLERK: We just have one who's in the restroom.

8 THE COURT: Okay. Whenever they're ready, bring them
9 out.

10 MR. HEINGOLD: Patrick says he's ready to go.

11 MR. MACK: Like Teller (inaudible 10:46:12) in this
12 relationship --

13 THE COURT: Yeah.

14 MR. MACK: -- Your Honor. Right?

15 THE COURT: Mr. Heingold, do you want me to read this
16 now or after?

17 MR. HEINGOLD: How about after, Judge?

18 THE COURT: Okay.

19 MR. HEINGOLD: Is that all right?

20 THE COURT: Sure.

21 (Jury in at 10:46 a.m.)

22 THE COURT: All right. Welcome back, everyone. Have
23 a seat. All right, Mr. Heingold. Do you have any questions
24 for Mr. Yeldman?

25 MR. HEINGOLD: I do, Your Honor.

Yeldman - Redirect (Hei)

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1 REDIRECT EXAMINATION

2 BY MR. HEINGOLD:

3 Q Mr. Yeldman, do air-cooled engines need to move to stay
4 cool?

5 A Yes.

6 Q Can you speak up? Make sure --

7 A Yes.

8 Q -- the jury can hear you. What happens if you don't move
9 an air-cooled engine?

10 A It gets hotter and hotter.

11 Q And if it gets hotter and hotter, can it overheat?

12 A Yes.

13 Q Can it start a fire?

14 A It's possible.

15 Q Okay. And can you conduct a test to the precise moment in
16 time that it will tell you when an air-cooled engine left
17 running at a standstill will catch fire?

18 A It's my experience directly and through my education that
19 environmental testing is very difficult. In other words, it's
20 -- it's hard to recreate the conditions or the variation of
21 conditions that occur. In other words, I'll have to say from
22 my experience with fire investigation, to recreate a situation
23 to start a fire is extremely difficult, because you never
24 really know exactly what the environmental conditions were. My
25 point being that the environmental conditions can change, can

Yeldman - Redirect (Hei)

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1 vary in many different ways.

2 Q Okay. And is the condition of the bike itself a variable?

3 A Yes.

4 Q And how it's been maintained?

5 A Yes.

6 Q Things like that? So is it a good idea to have a warning
7 that says this will happen in 27 minutes or 32 minutes or
8 something like that?

9 A That sounds like a bad idea.

10 Q Okay. Why is that a bad idea?

11 A Because the -- the time is variable.

12 Q The test that you were -- I'm sorry. Were you finished?

13 A Yes.

14 Q Okay. And -- and the warning that is -- is brought and
15 says don't do it covers all possibilities?

16 A That would do it. Yes.

17 Q Now, the tests that you've been talking about are tests
18 that were run in Germany, were run to see what happens in
19 normal operating conditions, correct?

20 A Yes.

21 Q Is it your understanding that -- that those --

22 THE COURT: All right. Well, don't lead the witness.
23 He's your witness.

24 MR. HEINGOLD: Okay.

25 BY MR. HEINGOLD:

Yeldman - Redirect (Hei)

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1 Q Do you have -- do you have an understanding whether those
2 tests were to the point of determining when any bike could --
3 could go -- could catch fire?

4 A I'm sorry. I didn't hear the last part.

5 Q Okay. Do you have an understanding about the purpose of
6 those tests?

7 A My understanding is basically the title, extended use
8 tests. Yes.

9 Q And it wasn't for predicting what would happen with a
10 particular --

11 THE COURT: That's leading.

12 MR. MACK: Objection.

13 THE COURT: Sustained.

14 MR. MACK: That is.

15 BY MR. HEINGOLD:

16 Q Was it for a purpose of determining what would happen to a
17 particular bike out in the field?

18 A My understanding that they run that on all the models.

19 Q Okay. But I'm talking about a particular individual bike
20 out in the field. Was that --

21 MR. MACK: Objection.

22 BY MR. HEINGOLD:

23 Q -- (inaudible 10:50:28) test?

24 MR. MACK: Leading.

25 THE COURT: What's your objection?

Yeldman - Redirect (Hei)

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1 MR. MACK: Leading.

2 THE COURT: No. He's just referring -- directing him
3 to what particular bike he was asking about.

4 A It's my understanding the test is done on a -- a
5 relatively new motorcycle that's been maintained properly.

6 BY MR. HEINGOLD:

7 Q But was it your understanding whether that test was to try
8 to predict what might happen to any bike out in the field
9 during some course of its ownership?

10 A It's my understanding that the test was -- was performed
11 to consider situations where the bike is used under extended
12 use like -- like in a traffic jam. An air-cooled engine, it's
13 going to get hotter. So the whole bike is going to get hotter
14 and just -- just what are the conditions that the bike -- the
15 motorcycle or the vehicle would encounter under -- I keep
16 referring to like extreme conditions or when you start to
17 approach extreme conditions is what the extended use tests are
18 applied -- applied to.

19 Q Can a -- I want to talk about idle. Can an air-cooled
20 engine overheat at idle --

21 A Yes.

22 Q -- if it's left running at a standstill?

23 A Yes.

24 Q Okay. Can it eventually catch fire at idle?

25 A Under certain conditions, yes.

Yeldman - Redirect (Hei)

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1 Q Okay. And can the same thing happen at elevated idle?

2 A That would happen a lot faster.

3 Q Okay. So the difference is not necessary -- is the --
4 tell me what the difference is.

5 A The difference of running an elevated idle is that --

6 Q Yes versus idle in terms of --

7 A Versus idle. The -- when the engine is running at idle,
8 it's tuned or adjusted -- the air fuel mixture electronically
9 is adjusted --

10 Q No. No.

11 MR. HEINGOLD: I hate to cut him, but that really --
12 BY MR. HEINGOLD:

13 Q You didn't understand the point of my question. If we're
14 talking about whether an air-cooled engine can overheat and/or
15 catch fire at idle or elevated idle, what's the difference
16 between the two?

17 A The difference is -- is that at elevated idle, it would
18 happen sooner.

19 Q Okay. It will still happen at idle?

20 A Yes.

21 Q Okay.

22 MR. HEINGOLD: Now, can I have the manual, page 51
23 and 60? I think that's D-2, D-3, please.

24 UNIDENTIFIED SPEAKER: Do you want them side by side?

25 MR. HEINGOLD: Yes, please.

Yeldman - Redirect (Hei)

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1 BY MR. HEINGOLD:

2 Q Can you see that, Mr. Yeldman?

3 A Yes.

4 MR. HEINGOLD: Am I blocking the jurors?

5 BY MR. HEINGOLD:

6 Q I'm going to put them up side by side here. Now, let's
7 start with page 51. Can you see at the bottom?

8 MR. HEINGOLD: Can we highlight the part that says,
9 "Do not allow the engine to idle", at the bottom?

10 A That's page 61.

11 UNIDENTIFIED SPEAKER: Yes.

12 BY MR. HEINGOLD:

13 Q That's 51. Do you have the manual, page 51?

14 MR. HEINGOLD: Exhibit D-3.

15 UNIDENTIFIED SPEAKER: Okay. Do you want the entire
16 warning?

17 MR. HEINGOLD: No. I want the bottom, please, "Do
18 not allow ...", there. No. Keep going, the rest of it. We
19 lost it. There we go.

20 BY MR. HEINGOLD:

21 Q Can you see that, Mr. Yeldman?

22 A Yes, I can.

23 Q All right. It says, "Do not allow the engine to idle --"
24 "-- idle unnecessarily or for long periods, risk of overheating
25 or fire, right away immediately after starting the engine."

Yeldman - Redirect (Hei)

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1 Does that warning, to your understanding, apply to what Mr.
2 Yasdani testified he was doing?

3 A Yes.

4 MR. HEINGOLD: Okay. Can we go to the next -- go
5 back. Let's enlarge D-2, the warning, the top half. Well, no.
6 Get the whole thing, whole thing.

7 UNIDENTIFIED SPEAKER: Okay.

8 MR. HEINGOLD: Oops.

9 BY MR. HEINGOLD:

10 Q Okay. Can you see that?

11 A Yes.

12 Q All right. That says, "Do not warm up the engine with a
13 motorcycle at a standstill -- risk of fire or overheating --
14 right away immediately after starting the engine. To avoid
15 overheating the air cooled engine or possible damage as a
16 result, avoid even short warmup periods at a standstill. Avoid
17 high engine speeds after a cold start." Does that warning
18 cover what Mr. Yasdani said he was doing?

19 A Yes.

20 MR. HEINGOLD: Okay. Thank you. You can take that
21 down.

22 BY MR. HEINGOLD:

23 Q Now, I want to clarify something briefly. You were talk
24 -- you were asked about the oil sight glass and whether it's
25 replaced, it's a maintenance item or a service item. I'd just

Yeldman - Redirect (Hei)

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1 like to clear that up. Is the oil sight glass a maintenance
2 item?

3 A No. It is not.

4 Q Okay. And what do you mean when you say it's a
5 maintenance item?

6 A To me, maintenance items are oil filters, wiper blades,
7 brake pads, things that are -- by design, wear out and have to
8 be replaced.

9 Q And they're on some type of service schedule?

10 A Yes.

11 Q Okay. If it -- if somehow during the ownership of -- of
12 the bike, the oil sight glass is broken or the seal is damaged
13 or the crank case is damaged, does it get replaced?

14 A Yes.

15 Q Okay. Is that what you meant when you were talking about
16 replacing oil sight glasses?

17 A Yes.

18 Q And if it gets damaged, might it leak?

19 A Yes.

20 Q Now, you were asked about eight other incidents regarding
21 R1150 motorcycles --

22 A Yes.

23 Q -- correct.

24 A Yes.

25 Q And that BMW NA had received notice of those claims --

Yeldman - Redirect (Hei)

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1 A Yes.

2 Q -- that were similar to the claims made here.

3 A Yes.

4 Q How many R1150s in the model years that were applicable to
5 the R1150s were sold?

6 A I forget the number. I think it was about 250,000.

7 Q Would it --

8 A I really --

9 Q 29,000 sound better?

10 A Oh, I'm sorry. I'm off by a factor of ten. Sorry. The
11 cars, the motorcycles that --

12 THE COURT: Do we agree it's 29,000?

13 A It's 29,000.

14 MR. MACK: No. I don't agree with that.

15 THE COURT: Okay.

16 A It's about 29,000.

17 BY MR. HEINGOLD:

18 Q 29,000. Okay. And if we did the math on the number of
19 claims versus the number of motorcycles --

20 A On the road.

21 Q -- on the road, that would be a failure rate of about .03
22 percent?

23 A Three tenths of a percent. Yeah.

24 Q Which would mean 99.97 percent?

25 THE COURT: All right. We're kind of --

Yeldman - Redirect (Hei)

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1 MR. MACK: Leading, Judge.

2 THE COURT: All right. We're leading and we're
3 arguing. So --

4 MR. HEINGOLD: Okay.

5 THE COURT: -- let's move on.

6 MR. HEINGOLD: All right.

7 BY MR. HEINGOLD:

8 Q You were also asked about a service campaign for the
9 R1100RSLs?

10 A Yes.

11 Q Okay. Let me just ask a quick question or two.

12 MR. HEINGOLD: Can I have that exhibit, please?

13 THE COURT: Which number is -- do you want?

14 MR. HEINGOLD: Which number is that, Mike?

15 MR. SALVATI: D-8.

16 MR. HEINGOLD: D-8, Your Honor. Okay. And --

17 MR. MACK: And, Judge, we may have to have --

18 UNIDENTIFIED SPEAKER: (Inaudible).

19 MR. HEINGOLD: Is this D-8?

20 MR. MACK: Yeah.

21 MR. MACK: I just want -- I don't know where you're
22 going with it, but I'll give you -- withdrawn.

23 THE COURT: Okay.

24 MR. HEINGOLD: Okay.

25 BY MR. HEINGOLD:

1 Q I just -- I just wanted to clarify something. You used
2 the word fairings with regard to the 1994 model of the RSL1100,
3 correct?

4 A Yes.

5 Q And if I can do it to make it simpler, are you talking
6 about this plastic --

7 A Yeah. You see the red plastic that wraps underneath the
8 cylinder head on the side all the way back under the seat all
9 the way up to the windshield. That's all the fairing. Yes.

10 Q And this is a sample of a 2004, which would be similar to
11 Mr. Yasdani's bike?

12 A Yes, it is.

13 Q And are there fairings there?

14 A No. You -- you see a windshield only and saddle bags that
15 would -- would not have been on Yasdani's bike.

16 Q In those 1990s when you were discovering issues with
17 ignition of the fairings, it was the plastic that -- of the
18 fairing that was catching fire?

19 A No. It was the paint.

20 Q The paint on the fairing?

21 A The paint would blister and create vapors that ignited.

22 Q Okay.

23 A Yes.

24 Q And as you testified, there was an insert in the manual
25 that was sent to customers and a label for customers who still

1 owned these bikes out in the field.

2 A Yes.

3 Q Okay. And are you familiar with the -- the warning, say
4 the 1992 manual that the insert was going to?

5 A Yes.

6 Q Okay. Did it say anything about risk of fire?

7 A No.

8 Q Did the insert say something about risk of fire?

9 A Yes.

10 Q And is the insert pretty close to what we have here now?

11 A In -- in the present manuals or in the manuals that we
12 looked at, yes.

13 Q Okay.

14 A Yes.

15 MR. HEINGOLD: You can take that down.

16 BY MR. HEINGOLD:

17 Q Are there advantages to using oil sight glasses?

18 A Generally, yes.

19 Q Can you tell us what they are?

20 A I think that the most significant advantage is that you
21 don't have to touch hot surfaces of the engine. A motorcycle
22 engine is not very big, and, of course, it's -- the dipstick is
23 -- is screwed into the engine crankcase whereas in a car, you
24 have a long tube. So when you grab the dipstick on -- on a
25 car, you're not -- it's warm, but it's not hot whereas the

1 dipstick is basically the temperature of the surface of the
2 crankcase, which is significantly hotter and can be difficult
3 to handle. Also, when you take it out, now you have oil on the
4 dipstick that may drip and -- and it's a little -- it could be
5 messy. Okay? When you have the dipstick out, something may
6 fall into the hole. Okay? We call that contamination. That
7 -- that strikes that out, and you can't lose the oil sight
8 glass. You could -- you can possibly lose a dipstick. That's
9 -- that's the advantages.

10 Q Okay. Are there any advantages relating to how others,
11 non-motorcycle owners react to motorcycles?

12 A I'm sorry?

13 Q Yeah. Are there any advantages to an oil sight glass
14 regarding how other people react to motorcycles? Vandalism,
15 for example.

16 THE COURT: I think that's kind of vague.

17 A I'm sorry. I didn't hear what he said.

18 BY MR. HEINGOLD:

19 Q Vandalism, for example.

20 A Oh, well, when I think of vandalism, I think of the
21 popular -- you take the Mercedes thing off the hood or the
22 Rolls Royce has the angel. Dipsticks can be taken, can be --
23 can -- vandalism, yeah. You can open the dipstick --

24 THE COURT: We're getting a little --

25 A -- and pour something in it.

Yeldman - Redirect (Hei)

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1 THE COURT: -- far afield here. All right. Hold on.
2 Let's move on. That doesn't really relate to this case.

3 BY MR. HEINGOLD:

4 Q When we talk about the deflection point, the seal around
5 an oil sight glass being 329 degrees fahrenheit, you with me?

6 A Yes.

7 Q Is -- is that where it begins?

8 A The deflection point is where the polymer starts to
9 deform.

10 Q Begins. It's not that --

11 A Begins, starts.

12 Q Is it instantaneous at 329 degrees fahrenheit?

13 A No. It starts.

14 Q Would there be -- if -- let's assume that someone leaves
15 their air-cooled motorcycle engine running at a standstill, and
16 let's assume it overheats and you're progressing toward a fire.
17 Does it instantly break into fire? Are there signs that one
18 would notice about that occurring if they were standing there?

19 A Depending on the -- the point we are at in the failure,
20 yes.

21 Q Okay. What kinds of things would you see?

22 A Well, the -- well, I would imagine that first, you are
23 going to get -- if I'm correct, I'm talking about the
24 progression to the oil sight glass failure or the -- or the --

25 Q Yes.

1 A What signs you would see before it actually opens up or
2 deforms and falls out, let's say?

3 Q And -- and starts a fire.

4 A Yeah.

5 Q If you were standing there watching it happen.

6 A Okay. Well --

7 Q What would you notice before a fire?

8 A The first thing -- as the engine gets hotter and hotter
9 and exceeds its normal operating temperatures, then you have
10 the degradation of the oil. You have less effective
11 lubrication. So the engine starts to run rougher, maybe a
12 little noisier. Also what -- from my experience, what tends to
13 happen is you get almost like a steamy or smoky -- a little bit
14 of smoke coming off the engine just from oils or whatever was
15 on the surface that are burning off now, and those two things
16 would happen.

17 Also, the -- the -- when the oil sight glass gets to
18 the temperature where the plastic -- the clear plastic polymer
19 is starting to melt, then the whole structure of the oil sight
20 glass loses its -- its structural integrity, and the -- the
21 rubber metal -- it's a combination of rubber and metal seal,
22 which is the interface between the plastic and the metal and
23 seals, okay, that is going to lose its adhesion, because the --
24 the plastic is holding it out, and now it starts to leak. The
25 plastic is going to start to degrade and open up, and then you

1 have an oil leak.

2 Q If I was standing there watching the process, would I see
3 smoke or smell things before a fire occurred?

4 A Yes. Long before.

5 Q Long before? You examined the remains of the Yazdani
6 motorcycle. They were made available to you, right?

7 A Yes.

8 Q Okay. Pretty much everything -- was pretty much
9 everything destroyed except the metal?

10 A Yeah. The -- the motorcycle in question, most of BMW
11 motorcycles designed like this. The engine is part of the
12 frame. So you have a -- you have the front wheel and forks and
13 handlebars, that whole assembly basically bolted to the front
14 of the engine, and then on the back of the engine, you have a
15 metal subframe we call it which holds the rear fender and the
16 seat and houses other components of the motorcycle. So when
17 they -- and the engine -- a lot of the engine is aluminum,
18 okay, which is a lower -- lower melting temperatures than the
19 steel and the iron, and when a motorcycle like this is
20 subjected to a fire in an enclosed garage, okay, there's a
21 very, very high material loss. Even parts of the engine can
22 melt. The aluminum can melt away. The subframe survives
23 because it's steel and the gas tank. Basically, everything
24 else is composed of aluminum or polymers and either melts or
25 burns away.

Yeldman - Redirect (Hei)

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1 Q Was there any way for you to determine that the oil sight
2 glass had failed?

3 A No.

4 Q Was there any way for you to determine whether the seal
5 around it had degraded --

6 A No.

7 Q -- and if so, so when?

8 A The -- there was melting of the crankcase of that surface
9 area. So you see the hole, but it looks a little deformed and
10 -- and somewhat melted around the area. So you can't tell.
11 You can't begin to see what the failure mode was like.

12 Q Okay. Were you invited to the scene of the accident?

13 A The -- the house itself?

14 Q The house where it happened.

15 A No.

16 Q Were you ever given any information about a battery
17 charger that was in the area of the motorcycle?

18 A No.

19 Q Would that have been significant?

20 A Yeah. Visiting the scene would have been significant
21 because --

22 THE COURT: No. He asked you --

23 A -- because it's a fire --

24 THE COURT: -- whether the battery charger -- knowing
25 that, whether that would have been significant.

1 A Yes. Yes, Your Honor.

2 BY MR. HEINGOLD:

3 Q Okay. Did anybody provide you with a battery charger?

4 A No.

5 Q What can happen if you take the -- the terminals of a
6 battery charger and connect them to the terminals of a
7 motorcycle battery?

8 A You mean the alligator clip terminals --

9 Q Yeah.

10 A -- that connect to the battery itself?

11 Q Yeah.

12 A The -- of course, motorcycle batteries are relatively
13 small. They're about this big, a quarter of the size of a --
14 of a car battery, maybe less. The terminals on them are
15 smaller. So the battery chargers that you can purchase to
16 charge motorcycle batteries are just like you would buy for
17 your lawnmower let's say if it has an electric start. So the
18 alligator clips look like your big jumper cables on a car when
19 you jump the battery, but they're only about this long. So --
20 this big, and they are -- the handles on them are insulated,
21 but the jaws or the teeth of the clamp is pretty much exposed.

22 So if you -- the battery is sitting in the motorcycle
23 usually under the seat. In this motorcycle, it's closer to the
24 -- underneath the -- the back of the gas tank but in front of
25 the seat. It's -- it's -- it's in a container. It's in a -- a

1 bin so to speak, and the -- the terminals are accessible. So
2 you take your seat off and -- or you take whatever cover is
3 over the battery off, and you can take these two alligator
4 clips and put them on the terminals. The way you put them, you
5 -- you sometimes have a choice. You can put them on this way
6 or you can put them on sideways. Whatever you do, you have to
7 make sure they're -- they're on there secure, because vibration
8 and movement can easily cause them to move their position,
9 because they're -- they're clamped. They're sprung. They --
10 they kind of move almost like 90 degrees. Like it sits like
11 this way, and if you tapped it, it would fall, and it would
12 still be clamped, but it would be sitting sideways. There have
13 been situations where an -- an operator puts them on the
14 battery and through vibration or movement, even a truck going
15 down the road in front of the house, this -- this cable moves,
16 and now you have the -- the cable that's -- the clamp that's
17 attached to the positive battery terminal can now fall and
18 ground against the motorcycle, the metal frame, and now you
19 have a direct short between the positive lead of the battery
20 and the motorcycle. So you can have a short circuit which --

21 Q And what's the potential consequence of short circuit?

22 A Many times, it's a fire.

23 Q Okay. And does that require the battery charger to be
24 plugged into an outlet?

25 A No, it doesn't. It's a direct short between the battery

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1 and the frame. It has nothing to do with your house current
2 that it's plugged into.

3 Q Can the vibration you're talking about be generated by the
4 motorcycle engine running?

5 A Absolutely.

6 MR. MACK: Can we have a sidebar?

7 THE COURT: Yes. Sure. Excuse me, sir. You can
8 stretch for a second, folks, if you want.

9 (Sidebar begins)

10 THE COURT: Okay. What's going on here?

11 MR. MACK: Tempted to just let it go but -- but as
12 entertaining as it is, this witness was identified as an O and
13 C expert, origin -- fire origin and cause expert. He didn't
14 produce a report. He wasn't permitted to insert opinions at --
15 at his deposition about the cause of the fire, and now counsel
16 is having him testify as an O and C.

17 MR. HEINGOLD: Well, I'm not. He -- he didn't
18 testify about what the cause was.

19 THE COURT: Well, what's the relevance of all this
20 then?

21 MR. HEINGOLD: Well, the relevance is that they have
22 to prove what happened, and they -- they went to the scene.
23 They had a guy there. We weren't invited.

24 THE COURT: Okay.

25 MR. HEINGOLD: He -- he revealed --

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1 THE COURT: That's all in.

2 MR. HEINGOLD: -- after his deposition -- well, I'm
3 done with that.

4 THE COURT: All right. Well, we don't need this
5 whole like tutorial on how a jumper cable works, and I don't
6 know what it has to do with the case unless you're going to
7 argue that the fire was caused --

8 MR. HEINGOLD: I wasn't --

9 THE COURT: -- by the jumper cable and not the
10 motorcycle.

11 MR. HEINGOLD: I wasn't expecting him to --

12 THE COURT: Okay.

13 MR. HEINGOLD: -- do the tutorial.

14 THE COURT: All right. Well, let's just move on
15 then.

16 MR. HEINGOLD: I didn't have a chance to tell him
17 keep it brief.

18 THE COURT: Let's just move on. Okay. Thank you.

19 MR. MACK: Just, I don't -- he doesn't have any
20 opinions on the investigation of the cause of the fire.

21 THE COURT: Yes. We're going to move on.

22 MR. HEINGOLD: We're done. We're done with that.

23 MR. MACK: Okay. Thanks, Judge.

24 THE COURT: All right.

25 (Sidebar ends)

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1 THE COURT: All right. So I'm going to sustain the
2 objection. Mr. Heingold is going to ask another question.

3 MR. HEINGOLD: I don't have any other questions for
4 this witness.

5 THE COURT: All right.

6 MR. HEINGOLD: Thank you.

7 THE COURT: Do you have any follow-up questions?

8 MR. MACK: Yes. Thanks, Judge.

9 THE COURT: Mr. Mack. Before I do that -- before you
10 do that, Mr. Mack, I'm going to read the limiting instruction.
11 All right?

12 MR. MACK: On the 1997?

13 THE COURT: Yes. Yes. Jurors, you've heard evidence
14 regarding the warnings that accompanied the BMW R1100RSL
15 motorcycle in evidence regarding BMW NA's response in 1997 to
16 reports of fire with that model motorcycle. The R1100RSL is a
17 different model motorcycle than that featured in this case --
18 is a different model motorcycle that featured a different
19 design and different components from the R1150R owned by Mr.
20 Yazdani. You may not consider evidence regarding the R-1100RSL
21 as proof that the Yazdani's motorcycle was defective. However,
22 Plaintiffs contend that the warnings that accompanied the RSL
23 in 1997 were similar to those that accompanied the Yazdani's
24 motorcycle. BMW NA contends that the warnings were
25 substantially different. If you find that the warnings were

1 similar, you may consider evidence of the RSL for the limited
2 purpose of evaluating whether the RSL incidents provided notice
3 to BMW NA that its warnings were inadequate on Mr. Yazdani's
4 model motorcycle.

5 So you have to determine whether the warnings were
6 similar, and if they were, you can consider that evidence that
7 BMW was on notice that its warnings were inadequate. So that's
8 what all that talk was about for the two different models of
9 motorcycles, and that's the relevant purpose you can use that
10 evidence.

11 All right? Thank you.

12 MR. MACK: Thank you.

13 THE COURT: Go ahead, sir.

14 RECROSS-EXAMINATION

15 BY MR. MACK:

16 Q I just jotted some notes down while you were testifying,
17 and one of the things that I heard you say was that if you were
18 standing next to the R1150R that Mr. Yazdani had while it was
19 on center stand and the sight glass began to fail, you would
20 notice that it was failing long before it actually failed.
21 That's what you --

22 A Long before a fire.

23 Q Long before a fire. How long before a fire?

24 A I don't know. I would say it could be many minutes.

25 Q It could be. Could be an hour and a half. It could be

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1 ten minutes, right? You don't know.

2 A Yeah.

3 Q Right. Correct. And you don't know because you've never
4 seen that happen, right?

5 A Correct.

6 Q You've never tested that, right?

7 A Correct.

8 Q You don't have any basis to say that somebody who's
9 standing there would actually see it from your own personal
10 experience, right?

11 A Well, they would see it if they were looking at it.

12 Q You think the would. You've never seen it, right?

13 A Well, the physical failure you cannot -- if you're looking
14 at it and the sight glass starts to deform as we were speaking
15 of --

16 Q Uh-huh.

17 A -- you would see it.

18 Q All right. We're taking about the long before, right?

19 A The what?

20 Q The long before. You said long before.

21 A Yes.

22 Q All right.

23 A Yes.

24 Q And you've never -- you've never seen how long that
25 process takes, right?

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1 A No.

2 Q All right. If somebody were just standing there and their
3 bike was running and the sight glass began to deform and leaked
4 oil onto the manifold, right, onto the exhaust, what would the
5 owner then do to prevent the oil from -- would the oil -- would
6 the owner have to -- or rider -- have to catch the oil before
7 it hit the hot exhaust at 700 degrees to prevent a fire?

8 A At the point where you have a catastrophic failure of the
9 oil sight glass, which is after it has started to deform and
10 now it's -- basically, it's plastic melting so that -- so the
11 hole is now opening up. Now -- and again, I'm saying this. I
12 haven't seen it happen in front of my eyes, but based on my
13 knowledge and experience, I believe that that -- that's what
14 would happen, and this -- this opening up would first start
15 with a leak but would quickly develop into a -- into --
16 actually pumping the oil out of the hole.

17 Q Quickly, right?

18 A Quickly. Yes.

19 Q Now -- and you're talking about the size of a quarter?

20 A But when I -- what I said about -- because it's not the
21 point where the plastic is deforming. Okay? You can -- you
22 can start to leak between the plastic and the seal at the
23 beginning of deformation. What I'm saying is that it's quite
24 likely that the oil starts to come out very slowly and then
25 quickly builds to the failure where it starts to pump out.

1 Q Well, and so under that scenario, the oil can start coming
2 out of the -- where the seal around the edges --

3 A Or the interface between the plastic and the rubber. Yes.

4 Q All right. Can leak from the interface between the
5 plastic and the rubber and drip down onto the hot -- contact
6 the hot manifold, ignite, right?

7 A No. No. The manifold is not directly underneath. The
8 way the oil gets to the manifold is that it's basically pumping
9 out or spewing out like a --

10 Q Let me ask you this.

11 A Yeah.

12 Q The -- the 1990 -- we heard a limiting instruction from
13 the Judge. The 1997 RSL, right?

14 A Yes.

15 Q The plastic that was igniting, that was closer to the hot
16 exhaust system -- or that was -- I'm sorry -- that was further
17 from the hot exhaust system than the oil sight glass is.

18 A Oh, no. It was much closer.

19 Q Much closer? How much closer?

20 A Well, you see from the pictures --

21 MR. HEINGOLD: Objection.

22 A It's best illustrated in the photo the -- the plastic from
23 the lower fairing, there's a hole in it that the exhaust comes
24 out. So it's kind of wrapped around it, okay, where the oil
25 sight glass is further up above it. Yeah.

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1 BY MR. MACK:

2 Q Okay. So right here is the oil sight glass, right?

3 A No.

4 Q Where is the oil sight glass? Show me.

5 A It's -- well, we -- you can go back to the other picture
6 you have that showed the oil sight glass. It's about -- it's
7 -- it's almost underneath the cylinder head.

8 Q Well, okay. Show me where it is on -- show me where it is
9 on the --

10 THE COURT: Do you want to step down, sir?

11 BY MR. MACK:

12 Q -- on the RSL, if you can.

13 THE COURT: Would that be easier for you?

14 MR. MACK: Thank you. Thank you, Judge.

15 A Right here is the hole in the fairing. See the oil sight
16 glass.

17 BY MR. MACK:

18 Q Okay. All right. And so the oil sight glass is within
19 that fairing, right?

20 A No. It's behind it. If you're standing on the left side
21 of the motorcycle, it would be further inboard.

22 Q All right. And you testified that it was the -- the
23 plastic, or I'm sorry, the paint that was ignited. Is that
24 what you said?

25 A Can I get up again?

Colloquy

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1 Q Sure.

2 THE COURT: No. No. He's asking you did you say --

3 BY MR. MACK:

4 Q No. I'm asking you a question.

5 A I'm sorry.

6 THE COURT: -- the paint was melting?

7 A Yes. The -- it's the paint -- the paint blisters, and
8 then the vapor from the blistering paint ignites.

9 BY MR. MACK:

10 Q Not the plastic?

11 A Plastic doesn't burn. Plastic vapors burn.

12 Q Well, you -- so what you're doing is you're saying that
13 the process of combustion requires whatever it is they're
14 burning, whether it's wood in a fireplace, it's not the wood
15 that actually burns in your fireplace, right?

16 A No.

17 Q Right. It's actually the vapor from the wood.

18 A Yes.

19 Q Yes. Right. So when you say paint, you don't mean that.
20 You mean it's the process of the decomposition of that fairing,
21 right? Just like wood in a fireplace, it's the decomposition
22 of the fairing.

23 A No. It's not the plastic. It's the paint that's
24 igniting, not the fairing.

25 THE COURT: All right. I don't know if this matters

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1 for our case. So let's move on.

2 MR. MACK: Okay.

3 BY MR. MACK:

4 Q At the very start of your direct, you said, "Idle versus
5 extended idle is a matter of how long it will take the bike to
6 fail in a fire condition." Do you remember that?

7 A Extended idle?

8 Q Yeah. That's what you said. You said idle versus
9 extended idle.

10 A I thought it was elevated idle.

11 Q And that's the point I wanted to make. It's not extended
12 idle. It's elevated idle, right?

13 A No. If -- if you let it idle long enough, you can start a
14 fire.

15 Q In any event, it would have to be much longer than 50
16 minutes, right?

17 A Apparently, under those -- the conditions under which the
18 test occurred, yes. It would have to be longer than 50
19 minutes.

20 Q All right. And that didn't happen here.

21 A I'm sorry?

22 Q That didn't happen here.

23 A What didn't happen?

24 Q There was no bike idling for longer than 50 minutes here.
25 Mr. Yazdani's bike wasn't idling longer than 50 minutes, was

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1 it?

2 A I don't believe so --

3 Q All right.

4 A -- based on all the knowledge we have.

5 MR. MACK: That's all I have. Thank you, sir.

6 THE COURT: Anything else, Mr. Heingold?

7 MR. HEINGOLD: Your Honor, no redirect.

8 THE COURT: All right. Does anybody have any
9 questions for Mr. Yeldman? We can just start with the ones you
10 have, Andy, while they're writing. Why don't you folks come on
11 up. We'll go over them.

12 (Sidebar begins)

13 THE COURT: All right. We've got a lot of questions
14 here.

15 MR. HEINGOLD: (Inaudible, 11:25:20)

16 THE COURT: Yes. Can we find out the incident rate
17 of the other model years of the R1150R?

18 MR. MACK: This is the problem, Judge. They didn't
19 produce in discovery any of this information. They didn't
20 produce the data on the production years, the production rate.

21 MR. HEINGOLD: This was the whole --

22 MR. MACK: They didn't produce anything..

23 MR. HEINGOLD: This was the whole thing, Judge.

24 THE COURT: The R1150R?

25 MR. HEINGOLD: Yes.

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1 MR. MACK: They didn't -- well, the question is --

2 THE COURT: The incident rate of other model years.

3 Do we have other model years?

4 MR. HEINGOLD: The incident rate --

5 MR. MACK: No. There wasn't 29,000 --

6 MR. HEINGOLD: It's the R --

7 THE COURT: Between the R -- the R1150R.

8 MR. HEINGOLD: The incident rate was for all R1150Rs.

9 MR. MACK: Not the 2004. Okay. So, Judge --

10 THE COURT: Well, why don't you just ask him?

11 MR. MACK: Yeah.

12 THE COURT: Does he know?

13 (Inaudible 11:26:16)

14 MR. HEINGOLD: I don't know if he -- yeah.

15 THE COURT: I'll ask him if you want. How many model
16 2004 R1150Rs were sold in the U.S.? 29,000?

17 MR. HEINGOLD: No.

18 MR. MACK: They never produced (inaudible 11:26:27).

19 MR. HEINGOLD: At the end of 2004, the R1150R. So
20 that's the whole production.

21 THE COURT: So I can say --

22 MR. HEINGOLD: Let me -- can I just explain what
23 we're doing. We produced our claims regarding all air -- air
24 cooled --

25 THE COURT: Uh-huh.

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1 MR. HEINGOLD: -- engines. They filed a motion
2 saying they're not applicable. You picked the ones -- there
3 were eight -- that dealt with the R1150R -- R1150. So --

4 THE COURT: RSL, right.

5 MR. HEINGOLD: And so that's what you have, and then
6 I said of that population, which is (inaudible 11:27:00), I
7 asked him how many -- how many were there. Now, if we get him
8 on the stand, is he going to say I don't know or you're going
9 to, you know -- I mean, he's -- this was -- this --

10 THE COURT: Do you guys knows?

11 MR. HEINGOLD: Yeah. The answer is eight. The
12 answer is eight for the R11 --

13 THE COURT: No.

14 MR. MACK: (Inaudible 11:27:21).

15 THE COURT: That were sold in the U.S. How many
16 model 2004s were sold --

17 MR. HEINGOLD: I don't know 2004. I know the R1150.

18 THE COURT: How many R1150Rs were sold in the US,
19 2004?

20 MR. HEINGOLD: Yes. 29. That's what we said.

21 MR. MACK: Two --

22 THE COURT: That's all of them --

23 MR. MACK: 2004 --

24 THE COURT: -- but how many -- hold on. Do we know
25 -- let me break it down.

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1 MR. HEINGOLD: I don't know how many in 2004.--

2 THE COURT: Do we know how many New York 04's were sold
3 in the U.S.

4 MR. HEINGOLD: No.

5 THE COURT: We don't know.

6 MR. HEINGOLD: I don't know.

7 THE COURT: Does he know?

8 MR. HEINGOLD: He won't know. He may -- could he
9 research it? The answer is yes, but doesn't know? No.

10 THE COURT: So I'm going to say we don't know.

11 MR. MACK: Here's the thing, Judge. Here's the
12 point. For 2004 we don't know the answer. He said 29,000. If
13 they're asking that question, I want to point out that --

14 THE COURT: The RL --

15 MR. MACK: -- none of the 2004 -- none of the 2004
16 RL11 -- none of the later production years failed. None of
17 them.

18 THE COURT: I'm on question 2. I just want to know
19 how many were sold. What is so complicated about this? We
20 don't know that.

21 MR. MACK: 29 over the six-year production.

22 MR. HEINGOLD: Right.

23 THE COURT: Could we agree with that?

24 MR. HEINGOLD: 2004.

25 MR. MACK: Yeah. We agree. None in 2004.

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1 THE COURT: Okay. Was a test ever done to duplicate
2 the Yasdani situation after the incident?

3 MR. HEINGOLD: No.

4 THE COURT: Can we agree it wasn't done?

5 MR. MACK: That's right.

6 THE COURT: Is there winterization recommendations
7 with the 1150R manual? I think no, right?

8 MR. MACK: The answer is no.

9 MR. HEINGOLD: The answer is no, but --

10 THE COURT: I'll just tell them no.

11 MR. HEINGOLD: -- I don't know that it's relevant.

12 THE COURT: I don't know. You guys were talking
13 about winterization.

14 (Inaudible 11:28:55)

15 THE COURT: Yeah. You can argue that in your
16 closing. Are there maintenance records for Mr. Yasdani's
17 motorcycle? Was the sight glass ever replaced?

18 MR. MACK: The sight glass was never -- I think we
19 can agree it was never replaced. We do have --

20 THE COURT: And his maintenance is not at issue,
21 right?

22 MR. MACK: It was -- the the history was under a
23 month.

24 MR. HEINGOLD: Right.

25 MR. MACK: His routine maintenance was performed the

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1 entire time.

2 THE COURT: See, this is the beautify of the
3 questions. You can --

4 MR. MACK: Sure.

5 THE COURT: -- take things out. How much does the
6 crank case hold? I don't know how that's relevant.

7 MR. HEINGOLD: I don't know.

8 THE COURT: It's not relevant, is it?

9 MR. MACK: What was the --

10 THE COURT: How much oil does the crank case hold?
11 Does the gas -- did the gas tank ignite? I assume it did if
12 the whole thing caught on fire, but --

13 MR. HEINGOLD: I don't know if the gas tank is --

14 MR. MACK: With the progression (inaudible 11:29:40).

15 THE COURT: I don't think it matters.

16 MR. MACK: Not at the -- not at the -- not at the
17 beginning.

18 MR. HEINGOLD: If he's talking about was there fuel
19 in there, I'm sure it does ignite, which is why the engine --

20 THE COURT: It doesn't matter. It doesn't -- it
21 doesn't --

22 MR. HEINGOLD: Yes.

23 THE COURT: Whether this was a defective design or
24 not. Has the warning reconstruction science caught up with the
25 practice? Oh, has the warmup.

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1 MR. MACK: Has the warmup? I don't know --

2 UNIDENTIFIED SPEAKER: Recommendation?

3 THE COURT: Recommendations.

4 UNIDENTIFIED SPEAKER: Recommended science.

5 MR. MACK: Science.

6 (Inaudible 11:30:15)

7 MR. MACK: Has (inaudible 11:30:24) caught up with
8 the practice?

9 THE COURT: (Inaudible 11:30:27).

10 MR. MACK: (Inaudible 11:30:30).

11 UNIDENTIFIED SPEAKER: (Inaudible 11:30:31).

12 MR. HEINGOLD: I think that -- that's a sensitive --
13 and I would -- I'm going to object.

14 THE COURT: I won't ask that one. All right. Did
15 the 2004 model incidents involve idling for extended periods?

16 MR. MACK: Yes.

17 MR. HEINGOLD: Well, you know, I guess that's True.
18 It's -- it's generic.

19 THE COURT: Does the exhaust reach temperatures over
20 700 degrees fahrenheit when running and moving or only when
21 idling. I guess he can ask that one. He can answer that?
22 You can answer that.

23 MR. HEINGOLD: I don't know the answer.

24 THE COURT: Okay. Let him answer. Does BMW offer
25 any winterization guidance in any of its publications?

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1 MR. HEINGOLD: I don't know the answer.

2 THE COURT: I'll ask him.

3 MR. HEINGOLD: It's not in the (inaudible 11:31:17).

4 MR. MACK: He said no.

5 THE COURT: I'll ask him.

6 MR. HEINGOLD: Did he?

7 THE COURT: Did the test at BMW feature new bikes,
8 not 10-year-old motorcycles?

9 MR. HEINGOLD: Yes.

10 THE COURT: I'll ask him does he know (inaudible
11 11:31:30). Okay. When oil leaks and begins to pump or spew
12 out, what does that look like?

13 MR. MACK: Judge, here's the thing thing about this
14 question here.

15 THE COURT: (Inaudible 11:31:41).

16 MR. MACK: The real question, this one here, you
17 didn't want us to show him the 2011 from the -- the testing
18 that was performed in 2011 on a used bike. There was one
19 performed on a used bike, the same testing, and we have the
20 data from it, and it was performed with -- in BMW's presence,
21 and we received the testing results from BMW. So it directly
22 answers the question.

23 MR. HEINGOLD: An adversary in another case ran a
24 test.

25 THE COURT: Right.

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1 MR. HEINGOLD: My recollection is he ran it for 20
2 minutes and nothing happened and they stopped the test and they
3 said --

4 THE COURT: All right.

5 MR. HEINGOLD: -- do it -- do it again.

6 THE COURT: Well, I'll ask him the question. We'll
7 see what he says. I think, you know, we're running the risk --
8 a serious risk here of this jury getting so confused, they're
9 losing sight of the ball, and we've got to keep them focused,
10 and anything we get into on other tests on the bikes is going
11 to make it worse.

12 MR. MACK: But just -- just the 2004 bike that was
13 tested, there was a 2004 1150R with 34,000 miles that was
14 tested in 2009. It was almost a direct representative of his
15 bike, and they're asking one question.

16 THE COURT: They said did it feature new bikes.

17 MR. MACK: They're asking about --

18 THE COURT: Not 10-year-old bikes. Did they test new
19 bikes. That's what they're asking.

20 MR. HEINGOLD: Well, they're -- they're asking about
21 did BMW test --

22 (Inaudible 11:32:55)

23 MR. HEINGOLD: That's what I thought that question
24 was.

25 THE COURT: All right. I'll ask the question. We'll

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1 see what he says.

2 MR. MACK: All right.

3 (Sidebar ends)

4 THE COURT: Sorry for the delay, folks. Okay, folks.
5 Let me see if I got these questions. One of them is kind of
6 vague. So I'm not going to be able to ask that. One question
7 is did all the 2004 model incidents involve idling for extended
8 periods, and the lawyers agree the answer to that is yes.

9 BY THE COURT:

10 Q Mr. Yeldman, does the exhaust reach temperatures over 700
11 degrees fahrenheit when running and moving or only when idling?

12 A Only at idle.

13 Q Okay. Does BMW offer any winterization guidance in any of
14 its publications?

15 A I don't believe so. I -- I do remember seeing a couple
16 things about care of the bike in stores like washing and the
17 battery, but I can't say for a fact.

18 Q Okay. Did the tests at BMW feature new bikes, not
19 10-year-old motorcycles?

20 A They were -- they were new. Yes.

21 Q Okay. Do you know the incident rate of other model years
22 of the R1150R?

23 A Incident rate of other model years?

24 Q Yeah.

25 A Other --

Yeldman - the Court

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1 Q Other than --

2 A Not as I sit here, but there were a few others.

3 Q Okay. And then the question is how many model 2004
4 R1150Rs were sold in the U.S., and the lawyers agree that we
5 don't know how many '04s but that about 29,000 were sold over
6 six years.

7 A Yes.

8 Q Do you know the '04 number?

9 A I'm sorry?

10 Q Do you know the number just for 2004 models?

11 A No. Just the 2004? No.

12 Q Okay.

13 A I can find out, but I don't know here.

14 Q No. I think it's sufficient. We don't know, but it's
15 29,000 over six years.

16 THE COURT: Was a test ever done to duplicate the
17 Yasdani situation after the incident? And the lawyers agree
18 the answer to that is no. Is there winterization
19 recommendations in the R1150R manual? The answer to that is
20 no, and you'll have the manual to deliberate.

21 There's a question here about Mr. Yasdani's
22 maintenance and things like that, and that's not at issue in
23 the case. There's no allegation that the motorcycle was
24 improperly maintained or -- and there's no -- the parties agree
25 that the sight glass was never replaced on his bike.

Yeldman - The Court/Recross (Mac)

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1 Similarly, whether the gas tank ignited or not doesn't really
2 matter. There was a fire. I'm sure the gas burned off
3 eventually --

4 THE WITNESS: Yes.

5 THE COURT: -- with the fire.

6 BY THE COURT:

7 Q You talked about oil spewing out when -- when it
8 overheats. It pumps or spews out. What does that look like?
9 How far out does it go?

10 A Far enough to hit the exhaust manifold.

11 Q So that's like an inch?

12 A A few inches --

13 Q Okay.

14 A -- I would think. Yes.

15 THE COURT: Okay. Counsel, anybody have follow-up on
16 any of those?

17 MR. MACK: Just briefly.

18 RECROSS-EXAMINATION

19 BY MR. MACK:

20 Q The 2004 R1150R is the only R1150R that we have a record
21 of oil sight glass failures causing fires, right?

22 A For 2000 -- yes. I believe so.

23 Q That's right. So no other model -- it was produced for
24 six model years --

25 A Well, no. I can't say that for a fact. I'm sorry. There

Yeldman - Recross (Mac)

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1 -- there may have been other model year R1150Rs with similar
2 failure. I don't know as I sit here.

3 Q Well, BMW produced the discovery documents, right? And of
4 the R1150Rs that involved the oil sight glass failures that BMW
5 had notice of, the only R1150Rs were 2004s.

6 A I believe so. Yes.

7 Q Okay. Now, and BMW is aware of testing that was performed
8 in 2011 on a R2 -- R1150R 2004 vintage that mimicked the
9 testing or the extended use testing, right?

10 A Yes.

11 Q And that 2011 testing that mimicked the 2002 testing
12 involving a ten-year old -- involving a -- well, it was a 2004
13 motorcycle that had 34,000 miles on it --

14 A Yes.

15 Q -- that was actually tested and performed extended use
16 testing, that bike also didn't fail when just running at idle,
17 right?

18 A Yes.

19 Q All right. Thank you.

20 THE COURT: Mr. Heingold, any questions?

21 MR. HEINGOLD: No further questions.

22 THE COURT: All right. You can step down, sir.

23 Thank you. Who's our next witness?

24 MR. HEINGOLD: Mr. Zazula.

25 THE COURT: All right. Mr. Zazula.

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1 MR. MACK: Plaintiff calls Michael Zazula.

2 THE CLERK: Remain standing and please raise your
3 right hand.

4 MICHAEL ZAZULA, PLAINTIFF'S WITNESS, SWORN

5 THE CLERK: Please state your full name, spell your
6 last name for the record.

7 THE WITNESS: Michael -- my last name is spelled Z as
8 in zebra, A as in apple, Z as in zebra, U-L-A.

9 THE COURT: Please be seated, sir.

10 THE WITNESS: Thank you.

11 THE COURT: All right, Mr. Mack.

12 MR. MACK: Thank you.

13 DIRECT EXAMINATION

14 BY MR. MACK:

15 Q Hi, Mr. Zazula. Let me know when you're ready.

16 A Sorry.

17 Q That's okay.

18 A Good morning.

19 Q Good morning. Can you tell the jury what you do for a
20 living?

21 A I investigate various mechanical failures in mechanical
22 components including motorcycles, HVAC systems, automobiles,
23 lawn and garden equipment.

24 Q Do you investigate fires?

25 A Yes.

1 Q All right.

2 A That's part of the investigation.

3 Q And is there any -- first of all, how long have you been
4 doing it?

5 A Close to 20 years.

6 Q Where do you live? Where you from?

7 A South Jersey, Philadelphia area.

8 Q And do you do that work just here in the local area or do
9 you do it --

10 A Throughout the country. Yes.

11 Q And you testify as an expert witness in cases?

12 A Yes. Yes, I have.

13 Q And that's what you're doing here, right? You're an
14 expert witness?

15 A Correct.

16 Q You didn't observe any of the facts personally at Mr.
17 Yazdani's house. You didn't see the fire, right?

18 A No. I did not.

19 Q All right. We're going to talk about your education,
20 training, and experience first so -- so the jury knows who you
21 are. Tell me, what was -- what was the first job that you had
22 where you had to investigate the failure of internal combustion
23 engines.

24 A I worked for Volkswagen of America doing technical
25 support and product analysis engineering where I would go out

1 into the field and investigate vehicles that were involved in
2 fires and various other defects, whether it's an accident, air
3 bag deployments, or failure of components that led to crashes
4 or fires.

5 Q All right. And when did you work for Volkswagen?

6 A I worked for Volkswagen -- I went to work for the
7 corporation in '97, but prior to that, I worked as a technical
8 support personnel in the field at the dealer level.

9 Q All right. What did it -- what -- technical support.
10 What did you do for that job?

11 A Technical support, I was involved in Lemon Law cases where
12 vehicles had consistent failures over and over again, and I
13 would work with the dealers and the technicians in assisting
14 them in remedying the issues with the vehicles.

15 Q All right. Was it your job back when you worked for
16 Volkswagen -- and what year was this?

17 A '93 through '97.

18 Q Was it your job to determine the root cause of failures?

19 A Yes.

20 Q '93 to '97. And how many fires did you investigate
21 involving combustion engines from '93 to '97?

22 A As I said, '97 is when I took on the role with the
23 corporation of Volkswagen, Volkswagen of America versus at the
24 dealer level. From '97 through my employment of 2004/2005, I
25 probably looked at over 300 vehicle fires, 400 vehicle fires.

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1 Q All right. And since 90 -- so '97. How long did you work
2 -- when did you finish working for Volkswagen?

3 A 2000 -- the end of 2004, beginning of 2005.

4 Q All right. During that time, '97 to 2004 or 2005, did you
5 have any training or education about how to analyze internal
6 combustion engines and figure out what caused them to fail?

7 A Part of my -- during my employment with Volkswagen, I was
8 sent to Germany to Volkswagen AG where I was trained with
9 various different components including air cooled engines,
10 because at the time, they were still using air cooled engines
11 in Mexico in the Beetle. The old Beetle was still being
12 produced in Mexico at that time. So I was in Mexico. I was at
13 Volkswagen in Würzburg as well as Audi and Porsche.

14 Q All right. And we're going to talk about your education,
15 training, and experience as we go through your investigation in
16 this case. Okay? So --

17 A Sure.

18 Q Just -- I want to get this jury right onto the R1150R in
19 this particular incident. Did you have an occasion to
20 investigate -- were you retained to investigate a fire in Mr.
21 Yazdani's house?

22 THE COURT: Well, hold on. Hold on. Is he
23 testifying as an expert?

24 MR. MACK: Yeah. He is. We're laying facts, Your
25 Honor.

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1 THE COURT: What is he an expert in?

2 MR. MACK: He's an expert in internal combustion
3 engines and cars.

4 THE COURT: Do you object to that or have any
5 questions on that?

6 MR. HEINGOLD: No as long as it's --

7 THE COURT: All right. So his expertise is internal
8 combustion engines and --

9 MR. MACK: Fires.

10 THE COURT: All fires?

11 MR. MACK: Well, he is, but for this case, Judge,
12 he's only going to testify about internal combustion engine
13 fires.

14 THE COURT: All right. Do you object to him
15 testifying he's an expert in those areas or do you have any
16 questions on qualifications?

17 MR. HEINGOLD: No. Within the confines of your
18 order.

19 THE COURT: All right. So I'm going to allow him to
20 give the jury expert testimony on internal combustion engines
21 and fires.

22 MR. MACK: Thank you, Judge.

23 THE COURT: Now, members of the jury, what that means
24 is when somebody is labeled as an expert, that means they have
25 experience that's beyond the experience of normal lay people

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1 like us. So they can offer insights into areas that we would
2 be otherwise unfamiliar with. You can take that testimony and
3 use it any way you want. Just because an expert says something
4 doesn't mean it's necessarily true, but you can consider it and
5 give it any weight you want. If you want to give it enhanced
6 weight, you can. That's entirely up to you.

7 MR. HEINGOLD: Your Honor --

8 THE COURT: Yes.

9 THE WITNESS: Thank you.

10 MR. HEINGOLD: -- my understanding is when he's
11 talking about being an expert in internal combustion engines
12 and fire, he's talking about how fires occur. He's not being
13 offered as an expert for design issues or internal combustion.

14 THE COURT: Yes. I've already discussed that --

15 MR. HEINGOLD: Okay.

16 THE COURT: -- in the order. Yes. He's not an
17 expert in design. Okay? Go ahead. You may proceed.

18 MR. MACK: Thank you. And we've marked as -- for
19 identification P-24, Judge. I would just --

20 THE COURT: Okay.

21 MR. MACK: I'll hand you a copy.

22 THE COURT: Thank you.

23 MR. MACK: Hand the witness a copy.

24 DIRECT EXAMINATION

25 BY MR. MACK:

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1 Q I just want --

2 THE COURT: P-24 is his resume. Any objections to
3 that?

4 MR. HEINGOLD: I don't have an objection to him
5 looking at it.

6 THE COURT: Well, it's his resume. Do you have an
7 objection to that coming into evidence?

8 MR. HEINGOLD: Not into the record.

9 THE COURT: I don't know what that means.

10 MR. HEINGOLD: It doesn't go out.

11 THE COURT: Anything that's admitted goes out. If
12 it's admitted in evidence, the jury gets it.

13 MR. HEINGOLD: I object to it then.

14 THE COURT: What's the objection?

15 MR. HEINGOLD: The objection is it's got information
16 in there extraneous to the issues to the issues that he's going
17 to testify.

18 THE COURT: All right. Well, that doesn't make it
19 inadmissible, and the jury can consider it for the relevant
20 purposes related to this case. I'll admit it.

21 MR. MACK: Thank you, Judge.

22 MR. HEINGOLD: Thank you, Judge.

23 BY MR. MACK:

24 Q All right. Let's put up P-23.

25 UNIDENTIFIED SPEAKER: 23?

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1 MR. MACK: P-23. No. This is P-24.

2 THE COURT: This is P-24.

3 MR. MACK: My apologies.

4 BY MR. MACK:

5 Q All right.

6 MR. MACK: All right.

7 THE WITNESS: Excuse me. Could I get a copy of that
8 if you have it?

9 MR. MACK: I thought I gave you one. I'm sorry, Mr.
10 Zazula.

11 THE WITNESS: My apologies. I have two of the same.
12 Thank you.

13 BY MR. MACK:

14 Q All right. Now, let's -- what I want to do is -- is tell
15 the jury what you did in this case. Okay? And -- and as we're
16 telling the jury what you did in this case, I want to talk
17 about facts. In this particular instance, were you assigned to
18 investigate a fire at Mr. Yazdani's house?

19 A Not at his house but to examine the evidence that was
20 retained.

21 Q All right. A fire that occurred in his house, right?

22 A Occurred in his house. Correct.

23 Q And tell me what did you do to determine what caused the
24 fire at his house?

25 A I spoke with Mr. Schriver, who was the fire investigator.

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1 Q All right.

2 A I also conducted inspections of the subject vehicle as
3 well.

4 Q All right. And your inspections of the subject vehicle,
5 how many were there?

6 A There were three.

7 Q And when you say three inspections of the subject vehicle,
8 are you talking about the remains, the fire damage remains?

9 A That is correct.

10 Q All right. On three separate occasions?

11 A Yes.

12 Q All right. Was BMW present for these three separate
13 exams?

14 A The two they were. The third one wasn't necessarily an
15 inspection, because we were attempting to radiograph components
16 of the exhaust system, specifically, the catalytic converter,
17 at which point we realized that due to the density of the
18 material, that we couldn't actually gain anything from
19 radiographing the -- the catalytic converter. So nothing was
20 done at that point.

21 Q All right. When you say radiographing, you mean X-ray?

22 A X-ray. I'm sorry.

23 Q You were trying to X-ray the --

24 A Yes.

25 Q Okay.

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1 A Yes.

2 Q And -- and BMW knew you were trying to X-ray the --

3 A Yes.

4 Q -- the vehicle? And you were going to share the results
5 with BMW?

6 A Absolutely.

7 Q All right. And did the X-rays help you?

8 A No.

9 Q Why not?

10 A As I said, we were going to. When I spoke with the
11 radiologist who was going to actually do -- the technician who
12 was going to do the X-rays, when he -- when I told him and
13 explained to him what we were looking at, at that point, he
14 told me I'm never going to be able to X-ray through it, because
15 the material inside is less than -- than the material outside.
16 So we weren't going to gain anything by doing it.

17 Q All right. And so that was the one evidence exam that you
18 --

19 A Correct.

20 Q -- looked at, right? And you looked at it two other
21 times, the remains of the bike.

22 A Yes.

23 Q Tell me about the first time. What did you look at?

24 A We looked at -- Mark and I had looked at what components
25 were left. We basically sorted them out on the ground, because

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1 as -- as Mr. Yeldman had testified, a lot of the components
2 were consumed as a result of the event. We did find certain
3 steel components that remained including brake rotors, the
4 exhaust components, and remainders of the frame at that point.
5 We also looked at the engine. We looked at the cylinder head,
6 and as Mr. Yeldman had testified, were significantly consumed
7 as a result of the incident.

8 Q All right. And P-25A -- if we look at P-25A, about page
9 39 of P-25A -- P-39A, what is that? It looks like it's
10 sideways.

11 MR. MACK: First of all, can you (inaudible
12 11:49:32). There we go.

13 A Ah, there we go. That's -- that's looking at the
14 motorcycle standing in front of the motorcycle as you'd be
15 looking towards it, and off to the right we see the left
16 cylinder head, and off to the left, we see the right cylinder
17 head, and as I said, it's kind of reverse view, because you're
18 looking at the front of it as you would your vehicle if you
19 were looking -- as if you were looking head on at it.

20 Q All right. What's the purpose of -- of taking the parts
21 out, unwrapping them, and looking at them on the ground at --

22 A That's how we --

23 Q -- out on the ground with Mr. -- with Mr. Yeldman?

24 A We -- that's what we do as part of our investigation, in
25 every investigation. We look at the whole body of evidence and

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1 we look at what we have. We look at what's been consumed, and
2 we use that to formulate our hypothesis during our
3 investigation.

4 Q And why are you trying to do that?

5 A We're ultimately trying to determine the cause of this
6 incident.

7 Q When you say develop hypothesis, you mean theories as to
8 how the fire started?

9 A Exactly.

10 Q All right. And so you don't just take the word for --
11 from some witnesses and rely on it?

12 A No. No. We use the whole body of evidence, which
13 includes the investigation, the evidence, witness interviews,
14 the components, previous history, service history, and other
15 failures related to.

16 Q And in this particular case, you reviewed the service
17 history of Mr. Yazdani's R1150R?

18 A Yes, I did.

19 Q All right. And was the service history remarkable in any
20 way?

21 A There was nothing unremarkable about it or remarkable
22 about it. He had his normal services conducted. There was one
23 instance on a trip to Atlanta where he noticed some rough
24 running, and I believe it was upon his return that he brought
25 it to a BMW dealer in Maryland, at which point they determined

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1 that there was -- I believe ignition coils were replaced on the
2 bike --

3 Q All right. And --

4 A -- or ignition module.

5 Q -- that didn't have anything to do with the cause of the
6 fire though?

7 A No.

8 Q All right. And your background in cars working for
9 Volkswagen on the dealership level prior to 1997, you're
10 familiar with how to read to service history.

11 A Correct.

12 Q Right?

13 A Yes.

14 Q All the invoices, right?

15 A Yes.

16 Q All right. In addition to reviewing the service history,
17 did you review anything else?

18 A I reviewed the information that was provided to me during
19 discovery, the (inaudible 11:51:58) Township fire report, as
20 well as the deposition of Mr. Yazdani, the rider's manual, and
21 various other sources of information.

22 Q And you considered all that information before forming an
23 opinion?

24 A Correct.

25 Q And when you form these hypothesis, are you constantly

1 forming and testing your hypothesis?

2 A Absolutely.

3 Q All right. And in this particular instance, did you form
4 a hypothesis that Mr. Yazdani began the -- or that the fire
5 began in his bike for any reason?

6 A That's what Mr. Yazdani had witnessed as well as the
7 report that Mr. Schriver had -- had provided.

8 Q All right. And the specific cause of Mr. Yazdani's bike
9 failing in a fire condition, how did that happen? Did you
10 figure that out?

11 A Yes.

12 Q Can you tell the jury?

13 A It was the failure of the oil sight glass --

14 Q All right. And --

15 A -- or the sealing material.

16 Q We talked a lot about that today, but can you explain to
17 the jury what that system is, the oil sight glass systems?

18 A Yes. As Mr. Yeldman -- consistent with Mr. Yeldman's
19 testimony, it's a seal. Just as you'd have a crank shaft seal
20 or a camshaft seal, this seal is actually pressed into the
21 aluminum case or sump, depending on what they refer to it as,
22 and instead of having a shaft protrude through it, there's an
23 actual piece of plastic, the Grilamid T70, is the plastic that
24 is actually in the center of that seal, and what that does is
25 it allows the operator to see the oil level within the case

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1 when the bike is not running obviously, not operating.

2 Q I'm going to stop you there. Grilamid T70, what the heck
3 is that?

4 A That is the clear plastic that's used within that sealing
5 system.

6 Q Is that type of clear plastic used anywhere else in common
7 everyday life that the jury would know?

8 A There is various of Grilamid used. It's similar to
9 polycarbonate, which is Lexan, which is used in sunglasses and
10 sometimes used in eyeglasses.

11 Q All right. And -- and so tell me what happens to that
12 sight glass as the engine is run over time.

13 A Well, as -- as Mr. Yeldman had testified as well, there is
14 expansion and contraction that occurs within the aluminum
15 engines. The co-efficient of expansion is different for
16 aluminum than it is for steel. So we have to variable sealing
17 surfaces within those components, and over a period of time, we
18 have expansion and contraction. We have thermal fatigue that
19 occurs, and that's why seals fail. We see it in cars. We see
20 it in valve cover caskets. We see it in crank case seals. We
21 see it on older cars that have leaks. You know, cars that are
22 five or six, seven years old start to develop leaks as --

23 Q In -- in the internal combustion engine context, can you
24 give me a sense as to an example of other seals that maybe the
25 jury would be more familiar with in terms of how they fail?

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1 A Valve cover gaskets on your engine, transmission seals
2 when there's -- you have a puddle of fluid leaking out from
3 underneath your car, your drain plug seals if they're not tight
4 enough, and all of that occurs because you have significant
5 thermal expansion and contraction that occurs over a period of
6 time.

7 Q Or if they're not properly installed.

8 A Correct.

9 Q The oil sight glass in the BMW R1150R that Mr. Yazdani
10 owned on the day of the fire, that oil sight glass was
11 installed at the factory, right?

12 A Correct.

13 Q Was there any indication to you that there was any
14 substantial change in the vehicle's condition since the time it
15 left the manufacturer's control, you know, after it was sold?

16 A No.

17 MR. HEINGOLD: Objection. No foundation for that,
18 Your Honor.

19 THE COURT: Did you -- did he -- ask him if he
20 reviewed any evidence.

21 MR. MACK: Yeah.

22 BY MR. MACK:

23 Q You -- you reviewed the repair history of the vehicle?

24 A Yes.

25 Q You saw the entire service history?

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1 A Yes.

2 Q All right. Was this vehicle ever in an accident?

3 A No.

4 Q All right. And you know that because?

5 A I checked on CARFAX. I also reviewed the history -- the
6 service history of the bike.

7 Q All right. There was no indication that this vehicle was
8 ever in a motor vehicle accident?

9 A No.

10 Q Was it ever damaged by anything that you could tell?

11 A No.

12 Q Were there any after-market components added to it?

13 A No.

14 Q Was there anything about the bike that was different from
15 the time that it rolled off the factory at BMW AG?

16 A The fluids were changed obviously. There was a seal that
17 was replaced when the bike was transported from California to
18 Boston, but that seal most likely was -- looking at the repair
19 order, appears to be a drain plug seal.

20 Q Routine maintenance?

21 A Yes.

22 Q Was there anything other than the normal wear and tear of
23 a vehicle since the time Mr. Yazdani owned it or since the time
24 it rolled off BMW AG's production line to the time it caused
25 the fire at Mr. Yazdani's house?

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1 A No.

2 Q All right. And the oil sight glass in question is put in
3 -- it's installed by BMW, right?

4 A Correct.

5 Q All right. Is -- what maintenance does Mr. Yazdani have
6 to do to make sure it doesn't leak oil onto his hot exhaust
7 manifold?

8 A None whatsoever.

9 Q All right. Is there anything Mr. Yazdani can do to
10 prevent the oil seal or oil sight glass, the plastic, from
11 leaking oil onto his oil sight glass?

12 A Other than observing it while it's leaking, no.

13 Q All right. Now, Mr. Yazdani testified that at the time of
14 the fire, he was -- he had his bike up on its center stand.
15 You're aware of that, right?

16 A Yes.

17 Q And he testified that he had started the vehicle. You're
18 aware of that?

19 A Yes.

20 Q All right. After starting the vehicle, do you know what
21 Mr. Yazdani did?

22 A After he started the vehicle, I believe he put it in the
23 D10 choke position, which is the middle position. At that
24 point, it ran at that -- it ran for several moments like that,
25 and then he finally switched it down to the off position so the

1 engine was not on choke.

2 Q Not on choke.

3 A Correct.

4 Q And he testified that he did that the first minute of
5 starting the bike, right?

6 A Yes.

7 Q Now, tell us what that means. When you start a bike, tell
8 us what the -- the full choke means, and take us through that
9 process.

10 A In this particular bike, and I believe we're -- on this
11 bike, there is four throttle cables. There's one for the
12 choke. There's one for the throttle. It connects to a
13 junction box, and then there's two separate cables that run out
14 to each throttle body, because this is a two-cylinder
15 motorcycle. So you have a separate cable for each cylinder.
16 So there is a variety of cables in this, and what the choke
17 cable does is it physically opens the throttle plate just
18 slightly.

19 Q All right. Mr. Yeldman testified that this was not a
20 choke actually. That's a misnomer. Is this a choke?

21 A It has a cable line. Absolutely.

22 Q All right. And the choke that -- the -- the process that
23 Mr. Yazdani described in his deposition and at trial here
24 today, is that consistent with the process of starting the
25 vehicle that's described in the manual?

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1 A Absolutely is.

2 Q All right. Tell me, what -- was he -- what was he doing?
3 Why was he running the vehicle, if you know?

4 A He was -- he was idling the vehicle. He was running it,
5 because he wasn't going to drive it in the dead of winter --

6 Q Why --

7 A -- when it's stone cold.

8 Q Why -- why would you do that?

9 A There is various reasons, as was discussed earlier. The
10 -- the vehicle -- the motorcycle is going to idle. It's going
11 to burn off contaminants within the oil. It's also going to
12 purge the fuel system as it's consuming fuel. You're not going
13 to leave the fuel in the lines. It's going to degrade and
14 varnish up in the fuel injectors. So there's multiple --
15 there's multiple reasons as well as charging the battery.

16 Q All right. And this is true for any internal combustion
17 engine, right?

18 A Correct.

19 Q Now, tell me, in an internal combustion engine, if you
20 don't start it right away and circulate those fluids like you
21 just described, tell me what happens to it.

22 A You could build varnish within the fuel system. That's
23 why they -- with a snow blower, people will run them in the
24 summer. I know myself, I personally run my -- when I go out in
25 the wintertime to run my snow blower, I'll start the lawnmower

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1 up just to run it, get the fuel through the system and flush
2 out, you know, anything that's building up within that system.

3 Q All right. Now, in motorcycles, tell me what can happen
4 in motorcycles if you don't run (inaudible 12:00:34).

5 A The same thing. I know, as Mr. Yeldman had testified
6 about, you can put deposits in there as well by running it to a
7 degree, but you get the engine hot enough that it burns that --
8 any condensation within that oil will be burned off.

9 Q When we're talking about hot oil, do you mean within
10 normal operating temperatures?

11 A Yes.

12 Q All right. Is there any indication -- do you have an
13 opinion, sir, as to whether this bike ever achieved operating
14 temperatures -- abnormal operation temperatures (inaudible
15 12:01:05).

16 MR. HEINGOLD: Objection.

17 THE COURT: Well, that's vague. So I'm going to
18 sustain it.

19 MR. MACK: (Inaudible 12:01:11).

20 THE COURT: All right. We've got to look for a
21 breaking point too to give the jury some lunch. So --

22 MR. MACK: I'm hungry. I'm sure they are. How about
23 now?

24 THE COURT: That's a good answer.

25 MR. MACK: Thank you.

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1 THE COURT: All right. We're going to break until
2 1:15, folks. Why don't you gather back here around 1:00.
3 We'll start right at 1:15.

4 THE WITNESS: Thank you.

5 THE COURT: Have a good lunch. You can step down,
6 sir.

7 THE WITNESS: Thank you.

8 THE CLERK: All rise.

9 THE COURT: I did want to thank both of our technical
10 assistants on a great job you're doing getting the exhibits up.
11 So thank you to both of you. You're doing a great job. Have a
12 good lunch, everyone.

13 ALL COUNSEL: Thank you, Your Honor.

14 (Recess taken, 12:01 p.m. to 1:15 p.m.)

15 (Transcriber change)

16 **(Remainder of hearing was requested not to be transcribed)**